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THE ASSASSINATION OF ABRAHAM  
LINCOLN AND ITS EXPIATION



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TORONTO

THE ASSASSINATION OF  
ABRAHAM LINCOLN  
AND ITS EXPIATION

BY  
DAVID MILLER DEWITT  
author of "THE IMPEACHMENT AND TRIAL OF PRESIDENT JOHNSON"

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TO GEORGE CHANDLER, M.D.  
whose skill alone rendered the work possi-  
ble and whose sagacity in the darkest  
hour foretold its completion, this book is  
gratefully dedicated.

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## PREFACE

THE assassination of Abraham Lincoln was a crime so revolting, so unprovoked and from every point of view so gratuitous and maleficent that it has found no open, and scarcely a secret, apologist even amongst the public enemies of the illustrious victim. The banded slayers of “the mightiest Julius” have found defenders down to the present day. The single-handed assassins of William the Silent and of the Great Henry of France—each was actuated by fanatical devotion to a creed, many of the votaries of which regarded them as but instruments in the hand of an insulted Deity. But neither resistance to tyrants nor obedience to God ever has been pleaded in extenuation of the taking-off of this tribune of the plain people, “with malice toward none, with charity for all.”

So world-shocking an event, with its train of dramatic incidents, should not be left “compassed murkily about” by “the din and dust” of popular fury raised by an overwhelming calamity to the nation. No circumstance should remain doubtful, no detail obscure. Every stroke of the brush should be true to nature and fact; the lights and shades evenly distributed; and every unverified tradition traced to its source. There should be no ambiguity about the lessons to be deduced; and if among those drawn into the whirlpool set up by so sudden a subversion of the

current of human affairs, there were any that suffered an unjust doom, their innocence should be made clear beyond further question.

To do this thoroughly, however, seems on first view to be a labor like the cleansing of the Augean stables and call for another Hercules. The swarms of legends, myths, fables and even downright lies that have settled around the central theme are well-nigh impenetrable, and were it not for one feature of the case, to undertake such a task would be idle as well as foolhardy. That exceptional feature is that every scene of every act in the awful tragedy—the most trivial as well as the most momentous—has been the subject-matter of sworn testimony before three different tribunals engaged in rigorous pursuit of the facts: testimony subjected to examination, direct and cross, on the part of both sides of the particular issue joined, every item of which is a matter of official record. To sift that testimony with an impartial hand and at the same time exclude every statement, narrative, sensational story, whether from history, biography, memoir, diary, magazine or newspaper, for which chapter and verse out of that three-fold record are not forthcoming:—by this method and by this method alone, the truth may possibly emerge from the mass of falsehood under which it lies buried.

This, at all events, is the method adopted in the preparation of the following work; and the facts, thus ascertained, are for the most part left to speak for themselves.

*N. B.*—The authorities above alluded to are the Conspiracy Trial (Poore's edition and the official report of Pitman), cited under the letters C. T.; the Trial of John H. Surratt (official), cited under the letters S. T., and the Impeachment Investigation of 1867, cited as Imp. Inv.



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THE ASSASSINATION  
OF  
ABRAHAM LINCOLN

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CHAPTER I

THE PLOT TO CAPTURE

ON the sixth day of July, 1821, at Richmond, Virginia, an actor bearing the name of Junius Brutus Booth made his first public appearance in the United States. Born in London in 1796, at the age of seventeen he took to the stage, joining a company strolling in the provinces which for one season varied its customary tour by a voyage to the Low Countries. He had hardly reached his majority before the celebrity won by his impersonation of Richard III brought him an invitation from the management of Covent Garden theatre to appear in the metropolis in competition with Edmund Kean—then, at the height of his fame, playing that character at Drury Lane, and whom, it was said, “in figure, voice and manner Booth so closely resembled that he might be taken for his twin brother.” So satisfactory was the experiment that negotiations were set on foot for a steady engagement, in the midst of which the young actor was beguiled into the acceptance of an offer from the rival establishment to play Iago to Kean’s Othello by the personal solicitations of the

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great tragedian himself. The announcement of this double performance packed Old Drury from pit to dome, Kean acting "as he never acted before" and his associate "fairly dividing the crown and keeping up the ball completely between them"; but, the second night, Booth, on the ground that "every character he was desirous or capable of playing was already in possession," declined to appear and incontinently went back to Richard III at Covent Garden, where at his reappearance the friends of Kean raised a tumult so deafening that for a few nights his acting was mere dumb show; and it was only by the persistent support of the managers that he was able to complete his engagement. Though he appeared the next two seasons at the same theatre—on one occasion playing Lear in rivalry with his former competitor, and, at the other house, on the eve of Kean's departure for America, joining him in a round of characters—the indignities heaped upon him at the start blighted his career in his native land and led to his self-expatriation. From his earliest boyhood the right of every people to self-government was the favored topic of the family hearth. His paternal grandmother was a relative of Wilkes. Richard Booth, his father, in his youth ran away from home to solicit from Arthur Lee, the agent of the rebellious colonies at Paris, a commission in their army; a picture of Washington hung on the parlor wall, to which every spectator was expected to take off his hat. He named one son Junius Brutus and another Algernon Sidney, wrote pamphlets advocating manhood suffrage and annual parliaments, thereby

incurring an unpopularity which seriously interfered with his success as a member of the bar. Bred in such a home atmosphere, the son looked forward to a much more enthusiastic welcome in the New World, where democratic ideas were the citizen's daily food, than he had experienced in the old country, where they were as yet so largely at a discount. Accordingly, shortly after his marriage, which was solemnized in London in January, 1821, he sailed with his bride for America, stopping for several weeks in Madeira and landing at Norfolk on the last day of June.\*

The reception he met with must have exceeded his most sanguine expectations. From his very first appearance he took the play-going public by storm. As the impersonator of such characters as Richard and Sir Giles Overreach, he was pronounced inimitable by the stars of the stage, and among the votaries of the theatre his name became a household word. His acting of Sir Giles, one of the best judges states, "was something to be remembered. During the last scene Booth's face . . . had a look of an uncaged tiger. His eyes flashed and seemed to snap with fire; his nostrils dilated; his cheeks appeared to quiver; his half-opened mouth with its thin lips pressed tightly against the white teeth, made a picture of anger fearful to look upon. . . . There was no applause the night I speak of; the acting was so intense and so natural that the mimic scene seemed really to have happened."† So

\* See Note I to this chapter in Appendix.

† "Autobiography of Joseph Jefferson," *Century Magazine* for January, 1890.

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successful was he that but a year after his arrival he bought a farm near Belair, about twenty-five miles northwest of Baltimore, where with his wife and infant child—born in Charleston in December—and with his father whom he sent for from London—in a log-cabin “plastered and whitewashed,” “with window sashes and shutters and doors painted red,” standing in a clearing of the forest, he set up his household gods. Here all his other children—nine in number—were born. He, himself, led the wandering life incident to his profession; acting in all the principal cities and towns, always to enraptured audiences. Twice he visited England—once in 1825 and again in 1837-8—taking his family with him. During his last ten years he spent a considerable portion of his time at home—at his residence in Baltimore in the winter and at his woodland farm in the summer. In the spring of 1852 he went to California, his son Edwin, whom he took with him, playing as his support in San Francisco and Sacramento; and he returned alone overland through Mexico to New Orleans, in which city he made his last appearance in November. Taking passage thence in a steamboat bound for Cincinnati, he died on the voyage the last day of that month, aged fifty-six years.

His career, however, so bright from a professional point of view, was marred by personal eccentricities that at times passed the bounds of sanity. Even in his youth, says his daughter, “we occasionally trace those slight aberrations of mind which mark that exquisite turning-point between genius and madness” and which “seemed to increase in strength and frequency with

maturer years." His most pressing engagements were at the mercy of these periodical attacks. He would disappear suddenly, leaving the manager and his fellow-actors in the lurch, and be found wandering in remote streets, or in the woods, or amid snow and ice. Again, he would demean himself so strangely that the members of the company were afraid to play with him and the manager had no alternative but to bar him from the stage. Once, in the last scene of *Richard III*, seized with an irrational aversion to the actor personating Richmond, he refused to succumb, keeping up the fight furiously in earnest until driven off the scene by the superior skill of his adversary. Sailing south in 1838, when nearing the spot where the elder Conway jumped overboard, he rushed up on deck and, exclaiming, "I have a message for Conway," threw himself into the sea and was rescued with difficulty. If he were anywhere within reach of his family when he felt the oncoming horror, he would make for home where his faithful wife would nurse him through his period of torture. So far from these attacks being caused by prolonged dissipation, to which they were often attributed, his daughter affirms that in the household they were looked upon "with awe and reverence"; on one occasion the loss of two children, one close after the other, so prostrated the absent father as to cut short a pending engagement and lead him at the moment to forswear the stage. Many were "the singular phases" this besetting affliction assumed. He was a rigid vegetarian, holding all animal life sacred. On his farm the killing of any member of the brute crea-

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tion, “from the partridge to the black snake and wild boar,” was sedulously interdicted. Once upon a time, when playing in a western town, he sent a note to a clergyman inquiring where he could buy a lot in which to inter some friends recently deceased. The clergyman, as he himself relates, called on the actor who, after entrancing his auditor by reading Coleridge’s *Ancient Mariner*, Byron’s epitaph on his dog and Shelley’s note to Queen Mab against the use of animal food, inquired: “Would you like to look at the remains?” and leading him into the next room, knelt down and moaned over a bushful of wild pigeons weltering in their blood. At the moment the astonished man of God suspected he was being made fun of; but he subsequently learned that the grief he witnessed was genuine indeed, the mourner buying a lot and, with coffin, hearse and funeral, burying the birds.\* Though a devout man he was singularly indiscriminate in his choice of creeds. He read and admired the Koran; texts from the Old Testament were at his tongue’s end; in the synagogue, joining in the worship, as he was able to do, in Hebrew, he was taken for a Jew; because of his advocacy of their more distinctive tenets the Catholics claimed him for their own; and he was a frequent and a praying attendant at a floating “Sailor’s Bethel.”†

Of this wayward genius, John Wilkes Booth was the “well-beloved, bright boy Absalom.” He was but thirteen years of age on the death of his father, and his

\* *Atlantic Monthly*, September, 1861; quoted in *Life*.

† See *Life*, cited in Note I, Appendix.

two elder brothers had long since deserted the paternal nest in the heart of the forest for their father's profession, a fondness and adaptability for which all the children of whom we have any information appear to have inherited. Edwin relates that he "seldom saw him since early boyhood" when he was considered a "good-hearted, harmless, wild-brained boy"—"a rattlepated fellow, full of quixotic notions"; he "would charge on horseback through the woods on the Maryland farm, spouting heroic speeches, with a lance given father by one of Taylor's soldiers."\* For four years he clung to his widowed mother whom he devotedly loved, and then he followed his brothers into the outer world—serving his apprenticeship with John S. Clarke who married his sister and conducted a theatre in Philadelphia. The John Brown raid occurred while he was playing an engagement at Richmond, and he instantly shouldered a musket, marched to the scene of hostilities, stood guard around the scaffold when the old man was hung, and remained with his regiment until the last of the raiders expiated their common offence. This self-devotion to avenge the desecrated soil of the Old Dominion secured for the actor on his reappearance a welcome from the slaveholding section so enthusiastic as to disarm criticism and originate the saying that while Junius Brutus held the extreme West and Edwin the North, Wilkes held the South for his possession. The commencement of the Civil War, however, shut him out of the limits of the new born Confederacy, confining his engagements to the theatres at Baltimore

\* *Recollections of Edwin Booth* (N. Y. Century Co.), p. 227.

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and Washington, varied by an occasional tour in a Northern state; so that in the winter of 1863-4, dissatisfied with his professional prospects, he put six thousand dollars of the money he had amassed into oil lands in western Pennsylvania and employed an agent to look after his interest on the spot, while he himself passed the summer, now at home with his mother, now visiting the oil works (acting on the journeys where opportunity offered), and now staying with his brothers in New York: Junius, at present, sojourning in that city and Edwin having undertaken the management of the Winter Garden theatre.\*

At this date Booth was but twenty-five years old. As described by one who knew him from boyhood, he was above the ordinary height, in form very graceful, in face remarkably handsome, with glossy black hair, moustache but no whiskers, complexion rather dark but pallid, hands noticeably large and white. Bold and fearless, one of the best gymnasts in the country, an excellent swordsman and noted for his extraordinary leaps on the stage; in manner peculiarly fascinating, very interesting in conversation, careful in dress and clean in person.† Gifted with a special aptitude for command, he possessed a rare power of attracting to himself persons of inferior station. The absence of all mental discipline, save that to which he was necessarily subjected in the practice of his art, gave full play to an inherited predisposition, especially

\* Note II in Appendix as to alleged Poison Plot. C. T., Testimony of Symonds, Poore, Vol. I, 39; E. Booth's Rec., *sup.*

† C. T., Poore, Vol. II, 527, 531-2; S. T., 547, testimony of J. T. Ford.

when the course of affairs did not run smooth, to fall into fits of the blackest melancholy or sullen rage. Having an overweening conceit of his own abilities he waxed impatient under opposition and domineering towards suspected rivals; and in these moods was liable to break out in some deed of startling eccentricity.

His origin, temperament, bringing-up and earlier associations being what they were, it was a matter of course that he threw his whole soul into the Southern cause. His own state, at the recent presidential election, out of a total vote of 92,500, cast but 2,300 for the Lincoln ticket and would have followed Virginia had not the Potomac flowed between and the capitol pinned her to the Union with a ponderosity against which an ordinance of secession, however valid as matter of law, was a nullity as a matter of fact. Through the streets of Baltimore and Washington, on their way to battle against the soldiers of secession, marched the soldiers of the Union to the strains of the "Star Spangled Banner"; while along the sidewalks sauntered the pseudo-secessionist humming to himself "The despot's heel is on thy shore, Maryland, my Maryland," and revolving in his heated brain some signal stroke which peradventure might call back the on-rushing dogs of war.

Of such home-staying champions, Booth was an extreme specimen. Some thought him insane on the one absorbing topic. He warned his brother that Lincoln, if reelected, would become "King of America." He was deterred, so he said, from joining the Confederacy only by a promise made to his mother "to keep out of

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the quarrel," the one thing he could not do. For the first two years, indeed, the victorious Confederacy needed no help from him. His impatient spirit could exult over the rout at Bull Run, the slaughter before Fredericksburg and the discomfiture at Chancellorsville. But Gettysburg filled the horizon of his hopes with blackness, and the gathering of Grant's mighty host for the final onset seemed to his distracted soul a personal challenge to the field. The people who had welcomed him with open arms were being slowly crushed to earth. The theatres—all were closed; the auditorium empty; the curtain down; his former patrons treading the stage where the fighting, the carnage and the death struggle were only too real. His mimic "occupation" was "gone" indeed. Some part in the tremendous tragedy he felt he must play. The unobtrusive rôle of a common soldier seemed miserably inadequate to his dream of glory. The canine appetite for distinction born in him and fed by the study of the heroes of the melodrama, nothing could appease short of some deed of unexampled daring that would signalize his entrance and his exit for all coming time. At the culminating moment he must fill the entire stage. Upon him alone must centre the wonder of contemporaries and the plaudits of posterity. As was well said of him, he "aspired to be the Brutus in real life that he had been and seen on the boards."\*

Grant's order of April, 1864, that not another Confederate prisoner should be exchanged sounded the call for which the actor was languishing in the side-scenes.

\* Argument of W. S. Cox in C. T., Pitman, 339.

The Confederacy was in sore need of soldiers. The Northern prisons were overcrowded—more than 23,000 able-bodied men wasting their strength away in confinement, while Union soldiers in Libby, at Belle Isle and Andersonville were starving because of the inability of the proper authorities to furnish sufficient food. In vain did the insurgent government yield every question in dispute. Grant was not to be moved: “If we liberate all prisoners,” he declared, “we’ll have to fight until the South is exterminated.” “If we hold those caught they are no more than dead men.” “It is hard on our men, but it is humanity to those left in the ranks.”<sup>†</sup> To free the captives expedition after expedition had been organized by the Confederate agents in Canada, but without success. Here was a Gordian knot fit for a stage Alexander to cut asunder with the sword. To seize the commander-in-chief of the armies of the North, carry him across the Potomac and deliver him over to the Confederates would at once repeal the iron-bound order, throw open the prison doors, pour new life into a failing cause, bring about a cessation of hostilities and, eventually perhaps, peace with honor. This project, mad though it essentially was, combined the three conditions calculated to appeal most powerfully to the eccentric temperament of its deviser. It was melodramatic in the highest degree; in its execution he would stand the one central figure; and, to an imagination steeped in the atmosphere of the theatre it was certain of success. From the point of view of this dainty athlete of the stage, the Railsplitter of the

<sup>†</sup> Rhodes’ *History of the United States*, Vol. V, 320, 485-7, 499, 500.

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West would be an easy victim. His uncouth aspect, his awkward movements, his story-telling habit shocked the actor's ideal of a ruler of men. His midnight flight through Baltimore in disguise, his ever-present care for the safety of the capital, his summons to the slaves to rise for their freedom were so many proofs that he would submit quietly to be kidnapped. Indeed, so unbounded was the assurance of this bold spirit in the feasibility of his scheme that at one step in its progress he did not hesitate to include the Secretary of State, the Secretary of War and the General of the Army as a supernumerary group about the principal captive.

Without delay he began to prepare for action. As early as August, 1864, he enlisted his first recruits, two former schoolmates of his—Samuel Arnold and Michael O'Laughlin—who having served two years in the Confederate army, had just returned to their respective homes in Baltimore, and were “engaged” to undertake “the enterprise.”\* He then went to the oil regions, divested himself of his holdings there and departed for Canada, reaching Montreal early in October. Here he was at the headquarters of the Confederate agents whose mission it was, with bands composed of escaped Confederate prisoners, refugees from the seceded states and volunteers from all quarters, to wage an irregular warfare along the border. Jacob Thompson of Mississippi, Secretary of the Interior in President Buchanan's cabinet, and Clement C. Clay, Jr., a senator of the United States from Ala-

\* See Note III in Appendix, and C. T., Poore, Vol. II, 147, 225; Pitman, 223, 236-240.

bama at the time of the secession of that state, were the chiefs in authority, recognized and supported by the government at Richmond, under whom were gathered such men as Beverly Tucker of Virginia and George N. Sanders of New York. At the time of Booth's arrival, this coterie was absorbed in calculating the chances of Lincoln's reëlection and counting the cost of the St. Albans raid; and it is likely that, to some of its members, he outlined his grand design, though there is no reliable evidence that he met either Thompson or Clay, both of whom subsequently disclaimed any acquaintance with him or his plot. His enterprise involved no breach of the law of nations, was as legitimate under the rules of war as those in which these agents were engaged, and needed no special sanction from the Richmond authorities.\* But the probability is that these experienced revolutionists far away from the proposed scene of action, if they were consulted at all, regarded the scheme as too wild and impracticable; and the enthusiastic projector was obliged to content himself with a vague promise to apprise the Confederate authorities of its pendency and with good wishes for its success. Be this as it may, Booth soon came to the conclusion that Canada was no place for him. On the twenty-seventh of October he bought of the Ontario Bank of Montreal a bill of exchange (in triplicate), drawn on the bank's London agents, payable to his order, for sixty-one pounds; for which he paid three hundred dollars in gold, remarking that he was going to run the blockade and wanted to make sure that in

\* Argument of Cox, Pitman, 342.

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the event of his being taken prisoner his captors could not use the money. He also opened an account by depositing five hundred and fifty dollars and taking out a bank book. From an acquaintance by the name of Martin, a former resident of lower Maryland, he got letters of introduction to parties in that quarter, and, armed with these, his bill of exchange and his bank book he shook the dust of the indifferent city from the soles of his feet and struck for home overland.\* Having entered into a previous engagement with his two brothers to play with them in *Julius Cæsar* for the benefit of a fund being raised for a statue of Shakespeare to stand in Central Park, he stopped on his way at the city of New York to fix the date for the twenty-fifth of November, and reached home on the eighth (election day), in time to vote against the candidate, whose defeat would have stayed the pursuit of his fell purpose.† The next morning he hears that even Maryland had gone to swell the triumph of the victor, and filled with chagrin he starts for Washington, arriving at his usual quarters in the National Hotel in the evening.‡

At the capital he was as much at home as in the city of his residence. With the two principal theatres—every entrance and exit, front or back, every passageway behind the curtain and under the stage—he was familiar, and to him the stock-actors and employees were well known. Especially was this the case at Ford's,

\* C. T., Poore, Vol. II, 87; Vol. I, 44.

† *Recollections of Edwin Booth*, sup., 153, 154.

‡ Bunker's Memorandum, Poore, Vol. I, 32, and Appendix, Note IV.

owned by his friend from boyhood, who owned also and managed a similar establishment in Baltimore; one of his brothers being the business manager and another the treasurer of the Washington theatre. Here Booth when in the city was in the habit of resorting at all hours, having the run of the house; and here his letters were addressed. The thoroughness of his acquaintance with the building and the exceptional privileges he enjoyed led him at first to fix upon a crowded house as the scene of the capture, rather than the highways of the suburbs where, in comparison, capture was easy and not without precedent. If he struck at all, he would boast that he "struck boldly"; if he "walked with a firm step" it must be "through a thousand of the friends" of his victim. The performance must be "actable" and he "the one hero of the act."\* Either *modus operandi* required the purchase of horses to mount his troop and the selection of the route to the river, and to these preliminaries he hastened to address himself. On Saturday, the nineteenth of November, we find him at Bryantown, a village on the stage road from Washington through lower Maryland, thirty miles from the capital, distant on one side ten miles from the Patuxent river and on the other about fifteen miles from Pope's Creek on the Potomac opposite Matthews' Point on the Virginia shore—the site of the principal ferry on the underground route to and from Richmond. In the dusk of the evening he comes to the house of Dr. Queen—guided by the doctor's son—to whom he carries a letter of introduction from Martin

\* Booth's diary; *Katy of Catoctin*, 475, 479.

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in Montreal, and with whom the next morning he goes to church. Before the service he is introduced among others to Samuel A. Mudd, another physician of the neighborhood, in whose company the next day he buys from a neighbor a dark bay saddle horse, old and blind of one eye—a steed destined in the course of events to carry the mad assailant of Seward.\*

This, as all the circumstances show, was Booth's first visit to Charles county, and made, not by way of the road leading from Washington, but from Baltimore by way of the Patuxent. All the well-to-do residents, slaveholders at the beginning of the war, sympathized with the Southern cause; but, at the date we have reached, there was quite a sprinkling among the voters of men who foresaw the downfall of the Confederacy and were preparing to submit to the inevitable with no very poignant regrets. Among them the stranger was obliged to conceal his real object by talk of investing in lands and horses. With his letters of introduction he found no difficulty in gaining information about certain subjects; for example, the roads leading to the Potomac, some of them provided with gates that could be left open to fugitives and closed against pursuers, the stations for relays on the underground route, the ferries and, particularly, the old town of Port Tobacco, lying six miles up a broad inlet of that name—thirty-four miles from Washington on a direct line “as the crow flies” from the city of Baltimore to the city of

\* Testimony on C. T. of Bowman, Poore, II, 334; Dyer, *id.*, 332, Pitman, 180; of Thompson, Poore, II, 268, Pitman, 178; of Gardner, Poore, I, 361; Ewing's argument, Pitman, 319.

Washington, as directly south as the plummet could hang—to be reached from the capital in six or seven hours' rapid riding.\* To Dr. Mudd, an original Southern sympathizer but who at the recent election had voted for the Union candidate for Congress, it is not likely that Booth confided the real object of his journey; their intercourse in all probability amounting to nothing more than overtures on the part of the visitor to purchase lands of which it was reported the doctor was anxious to get rid. At any rate, this trip must have been of short duration, as the actor's engagement to play in New York constrained him to hurry away to that city, where, on the night of the twenty-fifth, the three brothers appeared together—Edwin as Brutus, Junius as Cassius, and Wilkes as Antonius. While the play was in progress, by a sinister coincidence, the Astor House, the St. Nicholas, the Metropolitan, the Fifth Avenue and several other hotels were set afire by drunken incendiaries, said to be Confederate agents, and an alarm breaking out in the crowded audience at Winter Garden, it was only by the presence of mind of Edwin and two officials of the theatre that a panic was averted.†

As Booth was once more in Washington on the twelfth of December, it must have been during this interval, as he was passing through Philadelphia, that he deposited with his brother-in-law for safe keeping a sealed envelope containing a letter written in the style

\* *Katy of Catoctin*, 468, note, 366.

† Rhodes, *sup.*, Vol. V, 339; Kennedy's confession, Poore, II, 403; *Rem. of E. Booth*, 154; *N. Y. Herald* of 24, 25, 26 Nov., 1864.

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of the more famous diary, to vindicate the deed he was contemplating. Dated "1864" and addressed: "My dear Sir" and "(in the words of your master) 'To whom it may concern,' " it opened as follows:

"Right or wrong, God judge me, not man. For four years have I waited, hoped and prayed for the dark clouds to break and for a restoration of our former sunshine. To wait longer would be a crime. All hope for peace is dead. My prayers have proved as idle as my hopes. God's will be done; I go to see and share the bitter end";

and it closed:

"My love (as things stand to-day) is for the South alone. Nor do I deem it a dishonor in attempting to make for her a prisoner of this man to whom she owes so much of misery. If success attend me, I go penniless to her side. They say she has found that 'last ditch' which the North has so long derided and been endeavoring to force her in, forgetting that they are our brothers, and that it's impolitic to goad an enemy to madness. Should I reach her in safety and find it true, I will proudly beg permission to triumph or die in that same ditch by her side. A confederate doing duty on his own responsibility."\*

He stopped at the National Hotel for the greater part of time from the twelfth until Christmas and during the month of January; making several trips into lower Maryland by the old stage road over which a system of contraband travel and traffic had been established, and consulting the parties thus engaged in giving aid and comfort to the enemy, many of whom at

\* For whole paper, see Note V in Appendix.

this period were aware of the pendency of a plot to capture the President, if they did not actually offer their services to its chief. It was in December, also, that Booth rented a stable in the rear of Ford's theatre, which was repaired for him by Edward Spangler, a scene shifter of the company, who, cherishing an unbounded admiration for the actor, was glad to do him menial service; into which stable he put a buggy and two horses, one of them the one-eyed animal he had bought on his first visit to Bryantown.\*

At this stage of the plot the accession of a fresh recruit lent renewed vigor to its progress. On the road leading from Washington to Bryantown—ten miles from the Navy Yard bridge—there lived at the outbreak of the war a reputable citizen named John H. Surratt, who kept a tavern and farmed the adjoining land at a place called after himself Surrattsville. His wife—Mary E.—was a daughter of Samuel I. Jenkins, a man of substance in the county; his elder son, Isaac, was in Texas, a soldier under Magruder, his daughter, Anna E., was at home and his younger son, named after him, just seventeen,† was at St. Charles's College near Ellicott's Mills, a short distance west of Baltimore. The father's death in 1862 called the young student to the assistance of his mother in the management of the place and he was permitted to serve as his father's successor in the post office until November of the fol-

\* Bunker's Mem., Note IV in Appendix; C. T. (Pitman), 178, 179; Poore, I, 225; II, 104, 105, 528; S. T., 258; Pitman, 104; *Century*, April, 1884, "How Booth crossed the Potomae."

† Born April 13, 1844; S. T., 893.

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lowing year.\* Like the members of his family and the majority of his neighbors he favored the insurgents and was soon drawn into active participation in the clandestine commerce carried on between the capital of the Confederacy and the capital of the Union—"doing some hard riding," as he stated, in public, after the war was over, "carrying dispatches in the heels of his boots or between the planks of his buggy." "It was a fascinating life for me," he said; "it seemed as if I could not do too much or run too great a risk."† In October, 1864, the widow, finding that she could no longer keep up the farm and tavern with profit, leased them to an ex-policeman of the capital by the name of Lloyd and moved to Washington, opening a boarding house on H Street, between Sixth and Seventh, and leaving her son in charge at Surrattsville until the first of December, when the tenant was to take possession. This venture promised well from the first. She enjoyed a rather wide circle of acquaintances of the same religious faith with herself in the city, including several priests, who interested themselves in her behalf. The seven bedrooms were soon filled with boarders, among them one whose entry, though greeted with smiles of welcome, was really the herald of desolation to the household. Louis J. Wiechmann, at the college where he was studying for the priesthood had been the chum of John Surratt from the fall of 1859 until July, 1862, when they left the institution together—Wiechmann to

\* Baker's *History of Secret Service*, 560.

† Surratt's lecture at Rockville, Md., printed in *Washington Evening Star*, Dec. 8, 1870; reprinted, April 12, 1908.

be employed as a teacher in the capital until he obtained a position under the government as a clerk in the office of the commissary-general of prisoners. He visited his fellow-student at Surrattsville in the spring and summer of 1863, making the acquaintance of the mother and sister; and, as soon as he was apprised of the removal of the family to Washington he sought to become a boarder and was assigned to the second-story back room, which, on the arrival of his bosom friend, he was to share with him—both to sleep in the same bed. In fact, so close was their intimacy that, whatever degree of reticence the government clerk may have thought proper to observe, there can be no doubt that the rider of the underground route made no concealment of his sentiments on the absorbing topic of the hour.\* Surratt was not yet of age when he bade good-bye to his birthplace and moved to Washington, bent apparently on obtaining steady employment, necessitating the abandonment to a great degree of any further dealings with the enemy. Booth, it is certain, had not yet met him; the actor on his visits to Charles county not passing through Surrattsville until after the beginning of the tenancy of Lloyd. Still, in the course of his investigations he must have heard of the young scout and his change of residence and would lose no time in putting himself in touch with so congenial an associate. Accordingly, meeting Dr. Mudd on the

\* Surratt, as described by his friend, was six feet in height, with light-colored hair, eyes sunken under a very prominent forehead, a very large nose, without beard except a slight tuft on the chin, slender, but powerfully built. Wiechmann, Poore, I, 91, C. T.

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evening of the twenty-third of December in the streets of Washington, he pressed the latter for an introduction, and while on their way to the house in H Street, they happened to encounter Surratt in company with Wiechmann. At the actor's invitation, the party of four betook themselves to his room at the National, where, after regaling themselves in the customary manner and spending some time in conversing ostensibly about the purchase of Mudd's farm, they adjourned to the hotel where Mudd was stopping and, after further talk, separated—Booth going away by himself, and Surratt and Wiechmann together. This, it is agreed on all sides, was the first meeting of the two men who became the leading spirits of the plot to capture; but on this occasion it is not at all likely that the project was broached between them, Wiechmann's suspicions after the event, more particularly concerning Mudd's complicity, to the contrary notwithstanding. The doctor returned home the next morning, not to see the would-be buyer of his farm again until nearly four months hence when, in the early dawn, a fugitive in disguise and with a broken leg was lifted from his horse at the doctor's door. Surratt, as if nothing out of the usual course had taken place, applied for a position in the freight department of the Adams Express Company and on the thirtieth entered upon the discharge of his duties. Booth went to spend Christmas with his mother and thence to the city of New York, not returning until the last day of the year.\*

\* See Gen. Ewing's argument in Pitman and evidence therein cited.

While in that city, he sounded an intimate friend of his—Samuel K. Chester, a member of the stock-company playing at Winter Garden, “a bold resolute fellow”—on the latter’s willingness to join in the grand scheme he had in mind. Previously, when on his way back from Canada and again when he came to fill his engagement with his brothers, he had thrown out hints of a big speculation in hand, a share in which he offered to his fellow-actor; but now he disclosed for the first time the real nature of the performance he designed should take place at Ford’s theatre. Not only the President but heads of the departments were to be seized in the private box they occupied and hustled across the stage to the rear; and he wanted a man of nerve who was familiar with the premises to open the back door at a given signal. Chester recoiled in dismay, pleading his poverty and his duty to wife and children; but the tempter would listen to no such excuses: “there was plenty of money in the affair; fifty persons were in it; it was sure to succeed; refusal on his part he would regard as betrayal.” Still, Chester, as he testifies, turned a deaf ear to both threats and entreaties; but nevertheless Booth, on his return to Washington, kept on plying him with letters and at the same time urging Ford to lure him to the capital by the offer of an engagement.\*

In dealing with Surratt, his success was much less equivocal. New Year’s Day, 1865, fell on a Sunday, and this celebrated hero of the stage, calling at the residence of his recent acquaintance, met with a cor-

\* Chester in Poore, I, 43 *et seq.*; Ford in Imp. Inv. (1867), 535.

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dial reception from the ladies of the household. The moment he could obtain a private interview he hastened to unfold the full scope of his design to the son and in the name of their common allegiance to the struggling Confederacy invoke his coöperation. Far from exhibiting any of the scruples of Chester, Surratt welcomed the project with the utmost ardor; proposing on the instant to devote the hours of the next day (usually kept as a holiday) to a reconnoisance into lower Maryland—an adventure baulked, as it appears, by the refusal of the express company on account of rush of business, to give him leave of absence.\* But no employment so prosaic as marking packages for transportation at fifty dollars per month could be allowed to interfere with the glory of ending the war at a single stroke. His knowledge of the territory over which the intended captive must pass, with its relay stations, of the ferries across the Potomac, the haunts and habits of the secret agents of the underground route, was placed at the disposition of his chief, as well as the horses he had brought from the country and the credit he appears to have established at the principal livery stables in the capital. In addition to this invaluable aid in general, he was able to enlist just that class of recruits suited to the peculiar exigencies of the enterprise and, by temperament, disposition and station, most liable to succumb to the personal magnetism of the master. Among these were David E. Herold and George A. Atzerodt—both added to the band by Surratt almost immediately after his own adhesion. Herold was a

\* S. T., 338, 402, 414.

youth of about twenty years, living with his widowed mother and seven sisters near the Navy Yard bridge; recently employed as a clerk in a drug store in that neighborhood, but at present out of work, sauntering about the streets of Washington by day and haunting the theatre by night. He had attended school in the vicinity of Surrattsville, becoming acquainted with the Surratt family, and still continued his visits in Prince George's county. "Light and trifling," "far more of a boy than a man," "easily led," "unreliable," "fond of practical jokes," "with a laugh on his face all the time," as he was described by different persons who knew him from childhood\*—the actor whom he had often applauded from the pit had but to take him by the hand to make him his slave. Atzerodt was a much more serviceable acquisition. A German by descent, hailing originally from Montgomery county, north of the District, he was a coachmaker at Port Tobacco and, since the outbreak of the war, had been engaged in ferrying across the Potomac, under cover of night, parties bound to or from Richmond; a rough, stolid fellow, fierce in appearance, demeanor and talk, but cowardly at heart.†

On the second of January, Edwin Forrest began an engagement at Ford's theatre and the President was accustomed to attend at least one of the performances of the great tragedian. The play of Jack Cade was announced for the night of Wednesday, the eighteenth, and rumors were in the air that Lincoln intended to be

\* Poore, I, 377; II, 467, 547.

† See testimony as grouped in Pitman and argument of counsel.

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present. Booth gathers together his forces. His recruits are summoned to the capital. He sends fifty dollars to Chester with an order to be on hand by Saturday night.\* He himself on the evening of the tenth (Tuesday) leaves his hotel, travels by train to Philadelphia, calls the next morning on his brother-in-law, takes possession of the package he had deposited with him in November, takes out the paper, affixes his signature, and puts it back into the envelope which he reseals, superscribing it "J. Wilkes Booth," returns it to Clarke's custody and is back in Washington on the twelfth (Thursday).† On that day Surratt applies again for leave of absence—this time for three days—on the pretext that his mother needs him to escort her to their old home. The superintendent of the company refuses, and on the following day Mrs. Surratt appears and renews the request. The superintendent is not to be moved and the son throws up his berth. On Saturday, he rides over the well-known road to his birthplace, thence to T. B., thence to Bryantown, arranging for relays; thence, finally, to Port Tobacco where he finds Atzerodt and spends the night. Together, the whole of the next day, they scour the shores for boats to accommodate a party of ten or twelve who are to cross on the coming Wednesday night; and, not waiting for the dawn of Monday, the unwearied rider hastens back to the capital. These preparations however turned out to be useless. The President did not attend. It was a wild night. Booth and Surratt were ready, but, so

\* See Chester's testimony on C. T. Wash. *Evening Star* of that date.

† Note V in Appendix.

far as the testimony shows, neither Arnold nor O'Laughlin put in an appearance, and Chester came not. To supply the place of the latter, Booth at the last moment turned to John Matthews, a stock-actor at Ford's, and suddenly thrust upon him the vacant rôle; to be disappointed again in spite of importunings and threatenings, although, as we shall see, the failure did not interrupt their intimacy.\*

The total failure of this precipitous experiment to realize that feature of the plan that appealed the more powerfully to the inventor's imagination served but to disclose its impracticability. So long as the seizure was to take place in a crowded theatre, the success of the plot depended upon a contingency which could not be counted on for a sufficient length of time beforehand to admit of the requisite preparations; and, furthermore, the subordinate parts—for example, putting out the lights at the proper moment, handling the captive when thrown from the box and hustled across the stage, opening the rear door at a given signal—called for an amount of nerve and familiarity with the premises scarcely inferior to that which so singularly qualified the leader for the principal rôle. For this reason, therefore, while there was no abandonment of the project even in this questionable shape, there occurred at this stage a serious interruption to its progress. Booth was absent from Washington for nearly a month; for a part of the time in the city of New York, stopping at the residence of his brother Ed-

\* S. T., Wiechmann's testimony, 372, 414; Martin's, 213; Cleaver's, 204; Matthews in Imp. Inv., 782.

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win. He was evidently disheartened over the prospects of his enterprise, for he complained to Chester of the lukewarmness of his followers, denounced Matthews for his cowardice, and, lamenting the necessity for applying for funds to the Richmond authorities, took back the fifty dollars he had advanced to his fellow-actor who persisted in his refusal to join.\* During this interval, matters were virtually at a standstill at the capital. Atzerodt, weary of his watch at Port Tobacco, comes to Washington in search of his employer and makes his first call at the house in H Street. He is introduced by Surratt to the other members of the household—Wiechmann finding him to be “a very funny sort of a fellow”; so much so, indeed, that one night, during Surratt’s absence in New York, he is regaled with whiskey in Wiechmann’s room by this favorite boarder and a blockade-runner, named Howell, also awaiting Surratt’s return, and then put to bed in the attic; an incident arousing the outspoken displeasure of the landlady.† What is a much more material circumstance, Arnold and O’Laughlin rent a room on D Street the tenth of February:—this, so far as is known, being their first appearance on the scene of action since their enlistment, four months before.‡ Booth returns on the evening of the twenty-second, either in company with or within a day or two of Surratt who had gone to New York on an affair of his

\* Chester, *ut sup.*

† See Wiechmann on S. T., 374, 417-19, 439; C. T., Poore, I, 72, 88; II, 355-8, 360.

‡ Poore, C. T., I, 139.

own; and from this date until the breakdown of the plot, the members of the band remain within hail of their captain, who spends the interval, during which the approach of the second inauguration renders it unlikely that the President would attend the theatre, in making several trips into lower Maryland, in calling at the house in H Street and in holding consultations with Arnold and O'Laughlin.\*

It was during this partial lull that the entrance of a sinister figure upon the scene seems to have whetted his somewhat blunted purpose. On the first of March, while standing on the threshold of Barnum's Hotel in Baltimore, he recognized in a stranger dragging his limbs painfully along the street, the boy, whom, in the fall of 1861, he had met while playing an engagement at Richmond. At that date, Lewis Thornton Powell, the son of a Baptist preacher stationed in Florida, though but sixteen years of age, was a soldier in a Confederate regiment. Having obtained a pass he went to his first play and was so enthralled by the performance of the leading actor that he ventured behind the scenes to lay his homage at the feet of the enchanter. Since that memorable hour, he had passed through vicissitudes of fortune calculated to put to the proof the sanity of the maturest mind;—sharing in the fighting around Richmond and then at Antietam and Chancellorsville; wounded at Gettysburg, taken prisoner and detailed to serve as a hospital nurse; escaping and rejoining the Confederates; losing his two brothers at Murfreesboro. In January, 1865, in despair of his cause he wandered into Alexandria, tak-

\* Poore *ut sup.*; Bunker's Mem. in Appendix.

ing the oath of allegiance to the United States; making his way to Baltimore he spends six weeks looking for work and at last, for an assault upon a colored servant in a fit of fury, is brought before the provost-marshall and ordered north of Philadelphia. In this extremity, homeless, penniless, in rags, without food, banished to a region where he could hope for no succor, he hears the voice that nearly four years ago had so captivated his senses sounding in his ear like a veritable call from on High. Booth takes him by the hand, gives him food and clothing and, unfolding before his dazzled eyes the scheme he has in view, points out the path of glory and revenge. Springing from the depths of despondency, the half-maddened victim of suffering and disappointment clutches the opportunity thus held out to him with the eagerness of a drowning man and swears allegiance to his present saviour as his future lord and master. Payne—for that was the name he took the oath under and subsequently went by—was a gladiator in physical development though but twenty years of age. Tall, straight as an Indian and as imper- turbable; with coarse black hair parted low on one side, ruddy complexion, small dark eyes with a slight cast in one and a wild light in both, full lips pressed together by a cruel underjaw; of a narrow order of intellect and that undeveloped if not actually deranged—he was but the unreasoning creature of his environment, without fear and without remorse. The order of the provost-marshall making it imperative that he should disappear from Baltimore, Booth took him to Washington and kept him hidden until after the inaug-

uration; probably at the hotel where he himself was stopping, as he did not register as usual.\* On the evening of the third of March he himself, in company with Surratt and Wiechmann, was at the capitol watching the closing hours of the Congress; at the inauguration he stood close to the central figure, whose capture he was meditating and whom he was destined so soon to destroy; at night he was in the parlor of the house in H Street with Surratt, who had been riding round town all day at the heels of the procession.†

The seating of their contemplated prisoner in his high place for four years more was the signal for every member of the band to prepare for action. If anything was to be done to stay the triumph of the Union, now, if ever, was the time. Herold for the first and only time is seen at Mrs. Surratt's, consulting with Atzerodt and the son of the house. Payne ventures out under cover of night to make the acquaintance of the lieutenant of his captain; is received in Surratt's absence by Wiechmann and introduced to the ladies as a Baptist minister by the name of Wood; remains overnight and goes away in the early morning without seeing the object of his quest. A few days afterwards, calling a second time, he finds a young man lying on the bed in an upper room, whom Wiechmann identifies as Surratt, holds a private interview with him and is notified that by agreement between the two prin-

\* Testimony as to Payne in Pitman; of Eckert in Imp. Inv., 671; Bunker's Mem., S. T., 330 and in Appendix.

† Wiechmann, S. T., 379; Note I to Chap. II in Appendix.

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cipals in the plot he is to remain under the Surratt roof in secret until all is over.\*

An important step is now to be taken, which, it is singular in so perilous an enterprise, had not been thought of before. Hitherto the several members of the band had never been brought together. Arnold and O'Laughlin, the oldest recruits, had never met their later co-adherents; Surratt, Atzerodt and Herold, so far as appears, had never even heard of them, and Payne, the latest comer, of course, was acquainted with none but his captain. To remedy this disorder in the ranks, notice was sent round of a midnight assembly to be held at Gautier's restaurant on Pennsylvania Avenue on Friday the seventeenth of March;† and, in the meantime, Payne was to be taken to the theatre to inspect the proposed scene of action before being introduced to his fellows who were already cognizant of the complicated hazards they were to run. In pursuance of this programme, Booth engages the private box at Ford's which, with the one adjoining nearer the stage (the partition between the two being removed), was invariably appropriated to the use of the President whenever that high officer was to be present; giving a ticket of admission to Surratt who, in a closed carriage, with two of the lady boarders, conducts Payne, disguised in Wiechmann's military cloak, to the play. Between the acts, Booth comes to the box, and the three men proceed to take a view of the

\* C. T., Poore, I, 79; S. T., 379-80; testimony of Miss Fitzpatrick, Poore, II, 91, 183; S. T., 232-3, 377.

† See Note VI in Appendix.

premises. They step out into the narrow passage behind and discover that the door leading from the dress circle has no fastening whatever. They examine the two other doors; the one leading into the box the party were occupying, its lock having been forced a few nights before to let in a company that arrived after the usher had gone home with the key, they found could be opened by a mere push; the lock of the other was substantially in the same condition. The inspection over, Booth departs; Surratt and Payne sit out the play, escort the ladies home and then are off for the rendezvous.\*

At this first meeting of the band there were present Booth, Arnold, O'Laughlin, Surratt, Atzerodt, Herold and Payne. The session was a stormy one,—the assembly being divided on the question as to where the seizure should be made. Booth, clinging to the more spectacular method, called attention to the ease with which the President could be reached owing to the condition of the doors which one of their number, accompanied by himself, had just discovered. Arnold, on the other hand, protested that an attack in a crowded theatre was impracticable; involved interminable delay, no one being able to foresee when the President would attend; a capture in the suburbs was much more feasible; and, reminding his leader of a rumor abroad that the President was going to attend a theatrical performance at or near the Soldiers' Home, he declared that "if the thing was not done in a week" he, for one, would withdraw altogether.

\* Poore, II, 44, 91; S. T., 234, 613, 378; Pitman, 109, 111.

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Booth, as was his wont when he met with opposition, grew angry and retorted that a man who talked of backing out ought to be shot. But Arnold was not to be intimidated. "Two could play at that game," he quietly replied. Moreover, the majority seemed to be on his side. In truth, as has been well said, the project in the shape insisted upon by its author so bristled with difficulties that "it was only necessary for the parties concerned to assemble and arrange to put it in motion for the whole thing to fall to pieces."\* The conclusion finally arrived at was that, if the rumor mentioned turned out to be true, an attempt should be made to intercept the visitor—notice of the day and hour to be given the following evening at Ford's theatre, where Booth was to appear in his celebrated character of Pescara.†

Accordingly, at the succeeding performance every member of the band was on hand with the exception of Payne whom it was thought best to keep still under cover. In the book of Fate it was to be the last appearance on the stage of the popular actor save when he bounded on the boards from the body of the dying Lincoln. His friends and admirers crowded the house, as if to bid him a final farewell; Wiechmann and a fellow-boarder named Holahan mingled in the throng with Surratt, Atzerodt and Herold; Arnold and O'Laughlin sending a complimentary ticket to the woman from whom they rented their room. After the

\* Cox's argument, Pitman, 343.

† See Note VI in Appendix, and Poore, I, 429, 431; S. T., 380; Imp. Inv., 674.

play was over Booth passed the word around that the expected drive was to come off Monday, the rendezvous to be in a piece of woods near where the Seventh Street road crosses the city line; and the hour, two in the afternoon. Sunday passed in quiet suspense; Payne and Surratt in the attic of the house in H Street playing with revolvers and bowie knives—an amusement in which they were interrupted by the too curious Wiechmann. The next day "all rode out, but in pairs"—Arnold and O'Laughlin, Atzerodt and Payne, Booth and Surratt;—the last four starting from the front of the boarding house. Herold was sent on ahead to carry arms and ammunition and other equipments as far as T. B., a hamlet five or six miles beyond Surrattsville; there to await the coming cavalcade. They gather together at the appointed spot. The carriage is to be surrounded; the driver put out of the way; Surratt is to mount the box and take the reins; and then, on to the Eastern Branch, across the bridge and over the familiar road!—to Surrattsville; to T. B.; to Beantown; to Port Tobacco and across the Potomac, Atzerodt acting as ferryman; and the commander-in-chief of the Union armies is a prisoner in the hands of the enemy!

The noise of wheels indicates that the decisive hour has come, and every rider straightens himself for the fray. The carriage drives by, but lo! the President is not inside; as if some warning had been given, another officer\* sits placid in his stead. Filled with chagrin and apprehension of betrayal, the horsemen

\* Said to have been Chase, C. J., which seems impossible.

scatter in all directions. To Wiechmann reading in his room at six o'clock, enters Surratt brandishing a revolver, proclaiming his "ruin" and imploring his chum to provide shelter for him in a clerkship. To them enters Payne, silent, pistol on hip, blood-red with rage. Last comes the star-actor, riding-whip in hand, striding up and down, in the depth of his disappointment oblivious of the witness sitting by. The three retire to the attic, hold a hurried consultation and then leave the house together. Payne goes to Baltimore and thence, bethinking himself of the provost-marshall's sentence, to New York; and Booth follows him the next day. Arnold and O'Laughlin hasten to their homes. Through the night Surratt and Atzerodt ride after Herold, whom they meet as he is starting back early in the morning. On their return trip they stop at the Surratt tavern where they deposit the contents of Herold's buggy—two carbines, two double-barreled guns, a revolver, a coil of rope, a monkey wrench;—Surratt pointing out to the landlord a fit place for the concealment of the carbines. Finally, at noon of the next day, the President takes the steamboat for City Point, to remain at the front until the fall of Richmond and the surrender of Lee knock the life out of plots for his capture. On Saturday, Surratt departs for the Confederate capital, not to return until it is taken. On Monday, Arnold writes a letter to Booth withdrawing from "the enterprise," and on the first of April enters upon his duties as clerk in a store at Old Point Comfort. And so, the plotters having disbanded, the plot to capture the President of the United

States passes into the limbo of the abortive conspiracies of history.\*

Nevertheless, it should be carefully borne in mind that, though fantastic in conception, well-nigh impossible of execution, nay, in some respects ridiculous, if not insane, the conspiracy was an indubitable actuality. Indeed, it was to fortify this admonition, by the wilful neglect of which the prosecuting officers of the government wrought such inexpiable woe, that the present writer has entered so minutely into the details of the inception, development and dénouement of the plot. We trust that the readers of this chapter will proceed to the next under no such fatal misconception. To comprehend the awful event to follow, it is absolutely indispensable to start with the belief that the words of Booth's diary are true: "For six months we had worked to capture."

\* For particulars of attempt to kidnap, see testimony of Wiechmann on C. T., Poore, I, 370, and S. T., 399-400; Arnold's letter given in Appendix, Note III; Lloyd on S. T., 277; J. C. Thompson, S. T., 515; Note VI of Appendix; Arnold's letter to Booth in Note VII of Appendix.

## CHAPTER II

### THE ASSASSINATION

THAT the murder of the captive was a likely contingency of the plot to capture may have suggested itself to the mind of its author; but, as such a catastrophe would have been fatal to the result he aimed at, he must have looked upon it as an unavoidable risk to be guarded against with the utmost caution. A dead Lincoln, while placing the lives of the captors in imminent peril, would set no Confederate prisoner free. Manifestly, assassination as an end would not have been postulated as long as hopes of capture might be entertained; and it is evident that, notwithstanding the dismal failure of his first overt attempt, the leader had not reached this condition of mind. From New York he kept up communication with his scattered band; returned to Washington on the morning of Saturday, the twenty-fifth of March—the day on which Surratt departed for Richmond—and on the succeeding Monday a room was engaged for Payne at the Herndon House, where that conspirator took up his quarters on Friday, the thirty-first.\* But the continued absence of the President at the front rendered any present movement futile, and on the first of April Booth went back to the metropolis.

\* "Sturdy" letter, C. T., Poore, I, 371; S. T., 380-4, 439; Poore, I, 32, 449; S. T., 246.

There the tidings of the fall of Richmond reached him and all thought of an exchange of prisoners was banished forever. Meeting his friend Chester on Friday, the seventh of April, he gave vent to his despair; acknowledging that, owing to some of his partners backing out, his project had fallen through and, in consequence, he was selling off his horses. In the extremity of his chagrin he struck the table at which the two friends were sitting and exclaimed: "What an excellent chance I had, if I wished, to kill the President on inauguration day! I was on the stand as close to him nearly as I am to you."\* In this desperate mood he left New York for the last time, arriving at Washington on Saturday, the eighth, to remain until the end; and on Sunday evening President Lincoln returned, bringing with him news of the surrender of Lee. The loyal inhabitants of the capital plunged at once into a round of festivities. The old flag was set flying from every building, enthusiastic crowds filling the streets by day and torchlight processions by night. For the nation, the day of jubilee had come; for the defeated conspirator, nothing was left but to hover in the narrowing outer darkness, watching the chance to play the Brutus or the Tell of his distempered imagination. He was virtually alone. Arnold and O'Laughlin had left him; Surratt had gone to Canada; Payne, Atzerodt and Herold, the creatures of his bounty, clung to his heels, waiting for orders he was as yet at a loss to issue. On the evening of Tuesday, the eleventh, from a window of the White

\* See Note I to this chapter, in Appendix.

House, the President addressed a crowd on the lawn, in the midst of which were Booth and Payne. Referring to the experiment he himself had initiated in reconstructing the state of Louisiana, he said: "It is also unsatisfactory to some that the elective franchise is not given to the colored man. I would myself prefer that it were conferred on the very intelligent and on those who served our cause as soldiers."\* This utterance, though too mild to suit the radicals, threw Booth into such a rage that he urged his companion to shoot its author on the spot; but Payne protested that the risk was too great even for one so reckless as himself, and the two walked away, Booth muttering, "That is the last speech he will ever make."†

This, in all probability, was the moment when the design to kill first found lodgment in the brain of the baffled plotter. Indeed, in the first flush of his vengeful spirit he would be content with no single victim, no matter how exalted. He sends Atzerodt to the Kirkwood House to locate the room occupied by the Vice President, and the German takes advantage of the opportunity to gaze at the Abdiel of southern loyalty as he sat at dinner "with his yellow man behind him."‡ On Thursday afternoon he calls at Grover's theatre, noticeably anxious to ascertain whether an invitation had been sent to the President to come to the play that evening, and was told that one was about to be sent for the next day which

\* Rhodes' *Hist. U. S.*, Vol. 5, 135-6.

† Testimony of Maj. Eckert, Imp. Inv., 674.

‡ Testimony of Nevins, C. T., Poore, II, 277.

happened to be the anniversary of the fall of Fort Sumter; tidings which brought Atzerodt early in the morning once more to the Kirkwood, where he registered his name, and without entering the room assigned him went away with the key, which he must have delivered to Herold as that young man, shortly afterwards, concealed in the vacant apartment a revolver, a bowie knife and an overcoat, in the pocket of which was the bank book containing the account of Booth's deposit in the Montreal bank.\*

This was the situation, when, between eleven and twelve o'clock, Friday morning, Booth, coming to Ford's theatre for his letters, heard that a messenger from the White House had just engaged for that night the customary box for the President, who, moreover, was to be accompanied by General Grant. This pregnant piece of intelligence at once put out of the question the rival theatre, with which the actor was not so familiar, fixed Ford's as the scene of the coming tragedy and gave the leading performer a straight and steady course to pursue. The unexpected presence of so formidable an antagonist as the hero of Appomattox must have flurried him for a moment, but he remembered his minion at the Herndon House with whom he had so recently visited the scene of action for another purpose; and he lashed the sides of his intent with the self-admonition that still another illustrious victim would redouble the effectiveness of his blow and prolong the echo of his fame. Dallying no longer he marches straight for the goal; hires a

\* Poore, I, 110-1; II, 538-9.

bay mare for himself to be ready at four o'clock and orders the one-eyed horse he bought in December to be transferred to the stable in the rear of Ford's for the use of Payne; calls at Mrs. Surratt's just as she, with Wiechmann, is starting for Surrattsville, and hands her a package containing a field-glass to be delivered at the tavern; thence to the theatre and into the empty auditorium.\* The two boxes are thrown into one, the front decorated with flags and Washington's portrait; a rocking chair stands in the angle of the box nearest the audience; the locks of the doors are in the same loosened condition as when he inspected them with Payne. To bore a hole in the door of the first box through which to peer at his unsuspecting victim reclining in the chair; to provide for barring from the inside the door leading from the dress circle to the passageway by digging out a mortise in the plastering of the wall and testing an upright from a music stand he happened to have found on the floor of the auditorium, is the work of a few moments, and his preparations are complete.†

It is now four o'clock. Going for his horse he rides to Grover's theatre, dismounts and enters the office. There he writes an article to the following effect: he had for a long time devoted his money, his time and his energies to the accomplishment of an end, but he had been baffled; the moment had at length arrived when his plans must be changed; the world may censure him for what he is about to do, but he is sure that

\* Poore, I, 173-5; Wiechmann on S. T., 391, 444-5.

† Poore, I, 413-4; III, 21; S. T., 545-7, 612.

posterity will justify him. He signs the paper: "Men who love their country better than gold or life. J. W. Booth, — Payne, — Atzerodt, — Herold." He encloses it in an envelope which he addresses to the editor of the *National Intelligencer*, seals and stamps it for the post office. As he rides up the avenue he sees on the sidewalk John Matthews, the actor whom he had attempted in vain to enlist in the plot to capture, and hands him the letter with a request to deliver it in the morning unless he saw the writer in the meantime. While they were talking, officers of Lee's army as prisoners of war pass by in a body, and Booth, placing his hand to his forehead, ejaculates: "Great God! I have no longer a country!" Grant sweeps along in an open carriage, and the startled horseman, casting one hurried glance at the man he has marked out for the knife, seizes his friend by the hand with a nervous, excited grip, bids him good-bye, and gallops away.\* Stopping at the Kirkwood, he sends up his card to the Vice President's private secretary and, that officer being out, he rides up to the stable in the rear of the theatre, puts up his steed and, passing through the building, seeks at his hotel a quiet interval for rest and refreshment.†

Thus pass the hours of this fateful afternoon. When, at seven in the evening, the actor leaves the National hotel for the last time, he has heard of the departure of General Grant for Burlington and hastens to the Herndon House to confer with his stalwart

\* Testimony of Matthews, Imp. Inv., 782.

† Poore, I, 240-1; 110-1.

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ally on this sudden simplification of the programme. Payne, for his part, was all ready for whatever work was before him. He had given notice to the matron of the hotel that he was leaving for Baltimore, had been furnished with dinner at an earlier hour than usual, paid his bill and was on the watch for his captain. Five days before, Seward, the secretary of state, had been thrown from his carriage and was now lying at his residence with a broken jaw and a broken arm. He was the officer designated by statute to set the wheels of government in motion when the presidency and vice-presidency both became vacant; and, consequently, if Booth and Atzerodt carried out their respective parts in the plot, his removal would complete the paralysis of the government. Him, therefore, in place of Grant, Booth handed over to the tender mercies of this young savage, to whom it was a matter of indifference whether the object of his assault was a warrior crowned with laurel or a statesman prostrate and helpless on his bed of pain. Acting under the belief he expressed beneath the shadow of the scaffold that in war it was right to kill your enemy wherever you could find him, he belted round his waist the revolver and knife, and pulled on the cavalry boots Booth provided for him, announcing his readiness for the fray. Herold and Atzerodt who, during the afternoon, had been riding hired nags aimlessly about the street were summoned and given their final orders: Atzerodt was to do execution on the Vice President, and Herold, first guiding Payne to the Seward residence, was to hurry to the support of Atzerodt, secur-

ing by the way the articles hidden by himself in the room in the Kirkwood. As for the boy Herold, to be numbered among "the assassins of the President" (as he phrased it),\* without himself coming within striking distance, appealed to his instinct for adventure without calling for a degree of courage he was conscious he did not possess; but Atzerodt flinched. Having no stomach for an encounter with the man who, as military governor of Tennessee, had learned how to deal with assassins, he interposed the plea that he had enlisted to capture, but not to shed blood. On the street while going to the stable, his master endeavored to revive his sinking spirits by the assurance that Herold would help him out, but the wretched German whimpered that it was impossible, they could not do it. Booth stormed at him, cursed him for a coward and a traitor, reminded him that he had gone too far to withdraw, and left him swaying back and forth between the foreknowledge of failure should he make the attempt and the likelihood of being hung should he do nothing.

From the Herndon House, at the corner of F and Ninth streets, to the alley leading from F to the rear of the theatre was but half a block. The hour is close upon ten. The building, as they near it, is lighted up and the voices of the actors and the applause and laughter of the spectators can be heard without. The play is now more than half over—the second scene of the third and last act being on. It is the last appearance and the benefit of Laura Keene, acting her

\* Testimony of Jett, Poore, I, 309.

original character in the comedy of "Our American Cousin," to which Joseph Jefferson and the elder Sothern, in the two other leading rôles, had lent widespread celebrity. The President had entered at about half-past eight, greeted by a burst of music from the orchestra and the cheers of the audience rising as one man. At the stable, the two leading conspirators part for the last time; Payne, mounted on his one-eyed horse and attended by Herold, starts on his barbarous errand. Booth leads his bay horse to the rear door of the theatre and, calling for Spangler to hold the animal, enters and goes down under the stage, out of the private door into the alley on the south side leading to the street, and emerges in front of the building. The White House carriage stands at the curb and a crowd of sightseers is on the sidewalk, among others the costumer and the stage carpenter of the theatre. An actor, who is to sing a song in honor of the President at the close of the performance, approaches and asks the time; and the costumer, stepping into the vestibule and looking at the large clock on the wall, calls out: "Ten minutes past ten." Booth walks into the lobby and opening the door into the parquette notes the position of the President. Stepping back, he mounts the stairs leading to the dress circle and, hat in hand, picks his way amongst the chairs that choke the space usually left vacant behind the outer row of seats until he reaches the door of the passage behind the private boxes; and, then, leaning against the wall, he takes "a leisurely survey of the house."<sup>1</sup>\*

\* Poore, I, 179, 187-203; S. T., 570-1, 566; *cf.* Dye's testimony on G. T. (Poore, 181) and on S. T., 131.

At this nick of time, when the uplifting of a finger might have changed the whole trend of the future, let us call up the spectacle before the sad eyes of Abraham Lincoln in the last moment of his consciousness. He was seated in the corner of the box nearest the auditorium; on his right Mrs. Lincoln, and at the farther end Miss Harris and Major Rathbone—the daughter and step-son of senator Ira Harris from New York—who had been invited to fill the place of General and Mrs. Grant. The body of the house was filled to overflowing, but the six private boxes other than the two set apart for the illustrious visitor were empty; and no member of the cabinet was present. Laura Keene was standing at the first right entrance, and Maddox, the property man, at the corresponding entrance on the left. Behind the scene that was on, Spangler, having deputed the task of holding Booth's horse to a lad who usually stood guard at the door leading to the south alley, was standing, with his mate opposite, ready to draw off the flat; and Matthews, who personated Coyle, was sitting farther back waiting to be discovered. Asa Trenchard—personated by Harry Hawk—had the open stage to himself—Mrs. Mountchessington having left him alone with the rebuke that he was not "used to the manners of good society," in response to which aspersion he was soliloquizing: "Well, I guess I know enough to turn you inside out, old gal—you sockdologizing old man-trap." In the parquette, General Burnside was in the act of taking a seat, and the President, his attention being drawn to the unfortunate commander he had been con-

strained to remove, was pulling the folds of the flag away from the framework of the box and turning his head to that quarter of the auditorium.\*

Satisfied that the right moment had come, Booth steps down, shows his card to the President's messenger sitting below him, and without waiting for the latter's assent, enters the little corridor, shuts the door behind him and fixes the bar in place. The door of the farther box stands open. First peering through the hole in the closed door behind the President, he swings it back, puts the muzzle of his derringer to the head of the figure reclining in the chair and sends a bullet crashing through the brain. "Revenge for the South!" he cries; and letting fall the exhausted pistol and drawing his knife, he slashes Rathbone's arm uplifted to intercept him, and vaults over the balustrade to the boards, twelve feet below. Stumbling on one knee, he raises himself slowly up, falters out: "*Sic semper tyrannis*," and limps in a stooping posture across the stage; a blue shred of the flag he had torn in his leap fluttering in mute but ineffectual protest from the spur on his right heel. Dashing down the passage to the rear, he thrusts aside with his bloody weapon Withers—the leader of the orchestra—who stands paralyzed in his path, and another employee who attempts to arrest his flight; tears open the back door; springs upon his horse—knocking down with the butt of his knife the boy who is holding the animal—and is off like a whirlwind, the hoofs of his

\* Poore, I, 195, 225, 189, 200; Pitman 104; Matthews on Imp. Inv., 787; Play of "American Cousin"; Oldroyd. 28; cf. with Play, testimony of Maddox, Poore, II, 109.

steed striking sparks from the cobblestones of the alley.\*

For an instant, the sound of the shot stupefies both players and audience. Hawk, struck dumb by the wild figure bounding on the stage, makes a hurried exit not set down in his part. Matthews, out of sight, conjectures some new trick is being played on Dundreary. Rathbone's cry of "Stop that man," repeated by Miss Harris, if heard, is not heeded. A portly gentleman leaps from the orchestra rail over the footlights and pursues the flying phantom. Smoke comes sailing out of the box. A woman's voice calls for water. Spanbler shoves back the scene and Laura Keene runs out, raising both hands and ejaculating "We have got him! We will get him!" A soldier and a naval surgeon with the assistance of Miss Harris clamber up from the stage, and Dr. Charles Taft, having fought his way through, is lifted up by persons underneath. Meanwhile, persons from the audience are beating against the door leading from the dress circle, and Rathbone, though bleeding profusely from his wound, manages to dislodge the bar and they rush in; among them Colonel Crawford and Major Potter who succor their fainting comrade. In the auditorium voices are heard: "Hang him! Shoot him!" and then, in view of the assassin's escape, the angry menace, "Burn the theatre!" floats through the building and is caught

\* See testimony of Ferguson, McGowan, Rathbone, Withers, Burroughs, as given above and also Kent, Poore, I, 257; Anderson, *id.* 235-7; Pettit, S. T., 128; Ritterspaugh, Poore, II, 32. Ferguson's the most graphic. Withers', as given in Oldroyd, p. 20, etc., not reconcilable with that on C. T.

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up by the crowd surging to and fro in the street. Through the distracted audience the unconscious form of Lincoln is borne by reverent hands around the dress circle—men tearing up the seats from the floor to make way for the procession—thence down the stairway and across the street to a private house opposite, while messengers are speeding to summon the family physician, the surgeon-general, members of the cabinet and the two sons of the dying man.\*

Booth's part in “the something decisive and great” that he thought “must be done” was performed apparently without a mishap; not so the part assigned to his only reliable accomplice. At the same hour that his chief entered the front of the theatre, Payne entered the Seward mansion, opposite LaFayette Square, leaving Herold outside. Under the pretext that he was sent with medicine, a package of which he ostensibly carried in his hand, disregarding the remonstrances of the bellboy he pushed his way up the two pairs of stairs until his advance was checked by the eldest son of the house. Him, after a brief parley, he battered into insensibility with his revolver after it had missed fire; and the soldier-nurse opening the door of the sick chamber, he struck down with a blow of his knife. Bounding to the couch on which—his head supported by a steel frame and swathed in bandages—the helpless patient lay, he stabbed him once, twice, thrice, about the face and neck, until he

\* Affidavits of Miss Harris and Rathbone in Baker's book, 471-3; letter of Dr. Taft in Oldroyd, 29; Matthews and Ferguson, *ut sup.*

was seized from behind by the nurse, and the mangled sufferer rolled off the bed on the side toward the wall. Then ensued a fearful struggle—the nurse clutching the intruder in a desperate embrace and the intruder stabbing the nurse in the back with one hand and with the other beating him on the head with the revolver until the shattered weapon fell to the floor. At length, the second son aroused by the noise of the scuffle, appeared upon the scene and inch by inch pushed the interlocked pair from the dimly lighted chamber into the full light of the hall; whereupon the infuriated manslayer, freeing himself by a blow of the fist from the grasp of the exhausted servant, assaulted the newcomer with the handle of his remaining weapon—crying out the while: “I am mad! I am mad!” and sprang down the stairs, wounding a messenger from the State department whom he overtakes by the way. In the meantime, the bellboy had run out into the street and down to General Augur’s headquarters on the corner below, shrieking “Murder” as he went; and the daughter of the house from an upper window startled the ear of night with the same portentous cry. So that, when Payne, bareheaded and besmeared with blood, emerged from the mansion, he found himself deserted by his guide and threatened with arrest by a party of soldiers running to the rescue. Tossing away his bloodstained knife, he vaulted into the saddle, spurred north to Vermont Avenue, turned east, and was lost to sight, leaving behind him, weltering in their blood, beside the cabinet minister he was sent to assassinate, four other human beings whom he had no

preconceived design to harm, but slaying none. His failure, however, cannot be ascribed to unsteadiness of purpose or the lack of vigor in his blows. He walked with as firm a step as did his chief. He "struck" as "boldly" and with as strong "a heart."

But, as to the two other conspirators—if conspirators they can be called—they not only "failed"; they never struck at all. Herold, scared away from the Seward residence by the alarm that was sounded, started down the avenue, until, near Willard's Hotel, the hail of the liveryman whose horse he was riding completed his discomfiture; and deserting Atzerodt as he had deserted Payne, he ceased not his spurring until he struck on the track of his master. As for Atzerodt, his aimless movements lend a touch of the comic to the horrors of the night. The horse he hired in the afternoon he left at another stable at six o'clock to be kept saddled and bridled until ten. At ten he called for it and rode to the Kirkwood, but went no nearer his prey than the bar. Even there he did not linger, for, with instinctive prevision, he knew it would be useless to wait for his yoke-fellow in crime. He rode past Ford's while Booth was at his bloody work; thence past the Patent Office where he threw away his bowie knife still in its red sheath; and, after clattering about the streets until midnight, he fetched up at the Pennsylvania House where he had been stopping. Here, the news of the assassination redoubled his terrors and he hastened to restore his horse to its owner. Then, boarding a horse car bound for the Navy Yard, he begged permission to sleep in the store of an ac-

quaintance and this boon being denied him slunk back to his hotel. At an early hour next morning he started on foot for the home of his boyhood—twenty-two miles northwest of Washington—pawning his revolver for ten dollars at Georgetown after an unsuccessful effort to sell his watch. Poor, pitiable caricature of an assassin! Immolated as a sort of proleptic sacrifice for not doing what he was found guilty of attempting to do.\*

While this irresolute prowler was drinking whiskey in the basement of the Kirkwood, on the second floor Andrew Johnson, undisturbed by the faintest premonition of the tremendous change hanging over his head, was quietly sleeping in his bed. He spent the greater portion of the day in the Vice President's room at the capitol, dined at the hotel at five o'clock and kept to his room in the evening. Leonard J. Farwell, a former governor of Wisconsin, stopping at the Kirkwood and somewhat intimate with Johnson, sat in the audience at Ford's, heard the fatal shot and witnessed the actor's leap upon the stage; but, unlike the few spectators whose efforts were directed to the succor of the victim or the capture of the fugitive, his thoughts flew to his fellow-guest whose position in the government the tragic incident would so highly exalt. Making his way out of the building, he ran down Tenth Street and up two blocks on the avenue and burst into the Kirkwood, exclaiming: "Guard the doors; the President is murdered!" Darting up the stairs he rapped again

\* As to Herold, see Poore, I, 326. As to Atzerodt, *id.*, II, 507, 510; I, 395, 341, 390; his confession, Poore, I, 396, 399; Pitman, 307.

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and again on the door of the Vice President's apartment, calling out in a loud voice: "Governor Johnson, if you are in, I must see you!" The awakened sleeper sprang from his bed and unlocked the door; and Farwell gasps out the news so overwhelming in its effect that (as Farwell states) "grasping hands we fell upon each other as for mutual support." Other friends speedily gathered. The report of the assassination of the Secretary of State and the advent of the soldiers sent to protect the Vice President deepened the impression that murder was still in the air and the lives of the surviving heads of the government still in peril. The first move of Johnson was to send Farwell to ascertain the precise dimensions of the calamity; and the ex-governor with some trepidation proceeded to the house where the President had been carried and thence by a wide detour to the Seward residence. Returning to the Kirkwood he reported the particulars he had gathered; whereupon the Vice President, disregarding the remonstrances of his friends against his venturing out at such an hour, and declining the offer of a guard, ordered Major O'Bierne to lead the way and, taking Farwell with him, made his way along the crowded streets to the death-bed of Lincoln. There, looking sadly on while the life of his great predecessor ebbed slowly away, he remained until, at twenty-two minutes after seven in the morning the assassin's bullet made him President of the United States.\*

\* Testimony of Farwell in Pitman, 151; in Poore, III, 419. Farwell presented to Johnson an engrossed account of the events of the night written by himself, which I read among the papers of the ex-President in the possession of his daughter, Mrs. Patterson.

## CHAPTER III

### THE REIGN OF TERROR—THE CAPTURE AND DEATH OF BOOTH

THE assassination of Abraham Lincoln caused a revulsion of popular feeling which was simply terrific. The people of the North were just indulging in a universal glorification over the fall of the Confederate capital and the surrender of the main Confederate army. In every city, town, village and hamlet the joy-bells were ringing and the sound thereof was borne on the wings of the wind to the waste places of prairie, mountain and inland sea. At the very height of the jubilee, the dread spectre that hitherto had kept its haunts in the guarded palaces of kings stalked into the open portals of the transatlantic republic and laid a death-dealing hand on its twice-chosen head. With an abrupt clang the joy-bells ceased. For a moment, a silence that could be felt wrapped the whole wide land; and, then, here and there and everywhere arose the cry for vengeance, swelling louder and louder with every passing hour;—a vengeance commensurate with the monstrosity of the offence. The force of the reaction in the country was exemplified by the reign of terror which set in at the federal capital. The tidings of the ferocious assault on the Secretary of State coming at the same moment drove the panic-stricken citizens well-nigh to madness. The wildest rumors

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found ready credence; the bloody villains were still at work; the Vice President, the other members of the cabinet, the general of the army were doomed; the government was to be left without a head and the rebel forces were about to march on the defenceless city to be welcomed by their secret allies—the aiders and abettors of the assassins.

At this harrowing crisis the reins of government dropped into the hands of the Secretary of War; and a pilot more unfit to ride the whirlwind and direct the storm than Edwin M. Stanton could not have been found. It is true, he “never wanted energy”; but in qualities no less essential he was lamentably deficient. Bellicose in demeanor as he habitually was, in moments of storm and stress he was apt to lose his head. Thickcoming apprehensions overclouded his perception of the real facts of a case; he would boil over with rage whenever the course of affairs did not run to his liking; so that a rational and equitable judgment was the one thing he could not keep cool long enough to form. Grant said of him: “He cared nothing for the feelings of others. In fact, it seemed pleasanter to him to disappoint than to gratify. He felt no hesitation in assuming the functions of the Executive or in acting without advising with him. The secretary was very timid and it was impossible for him to avoid interfering with the armies covering the capital. He could see our weakness, but he could not see that the enemy was in danger. The enemy would not have been in danger if Mr. Stanton had been in the field.”\*

\* Mem. of Grant, II, 536-7.

Over-anxiety for the safety of his own headquarters drove him to denounce McClellan's reluctance to give battle until he was sure of victory as treachery to his own soldiers and collusion with the foe. The very first step to be taken in the present crisis was to calm the terrors of the people; and here was a leader who could not calm his own. Instead of endeavoring to mollify the prevailing madness, every movement he made seemed designed to keep it up to the highest pitch. Before the breath was out of the body of his chief, nay, before he knew who the assassin was and whether the Seward massacre was the work of the same hand or another, he rushed to the conclusion that the two-fold assassination was the outcome—still incomplete—of a great conspiracy stretching from Canada to Richmond, the source of which was the president and cabinet of the Southern Confederacy. This conclusion he fastened in the minds of the inhabitants of the District by placing guards around the residences of his colleagues and his own, and declaring the capital in a state of siege; and he spread it broadcast over the country and across the ocean by telegraph. In this savage mood he ordered the confiscation of the building which was stained, as it were, with the life-blood of the nation and the arrest of every human being employed in its service; and, while this decree was being carried into effect, he set in motion the machinery of his department to bring to justice the actual perpetrator and his accessories before and after the fact who, he believed, were without number and scattered all over the continent. Beside the regular police

force of the city, there were subject to his orders the military police attached to the provost-marshall's office, the officers and privates stationed at various points in the city and in the surrounding camps, barracks and fortifications, the retainers of the United States Secret Service and the corps of detectives and spies attached to the Bureau of Military Justice. Of these forces—more or less emulous of each other in the ordinary discharge of their duties—every man had caught in its worst form the epidemic of credulity and suspicion and, being stimulated by the hope of promotion and the large rewards placarded in all directions, plunged into a furious competition—multiplying arrests, extorting confessions, ferreting out witnesses and haling them before the nearest tribunal. A special commission, composed of three colonels, sat during the night at General Augur's headquarters to receive reports, take testimony, and follow up every clue; and in the back parlor of the house in which the President lay the Secretary of War, with the chief justice of the District, extemporized an investigation of his own. The actors, employees and spectators, hurried through the crowd outside to be sworn before him, were in such a state of bewilderment that those of them who expressed the belief that the figure they had caught a glimpse of was that of the well-known actor, declined to make a positive affirmation; and it was not until he was about to be summoned to the adjoining chamber by the imminence of death that the secretary was able to announce in a despatch to General Dix at New York, "with reasonable certainty," that the mur-

derer of Lincoln was John Wilkes Booth and the assailant of Seward was an accomplice not yet identified.\* Between the hours of twelve and one that night, a horse, blind in one eye, was found standing on a by-road leading to Camp Barry, three quarters of a mile east of the capital,—riderless, saddled and bridled, the sweat pouring off of him, quivering in every nerve†—and was taken to Augur's headquarters, where, shortly afterward, the saddle and bridle were identified by a liveryman as having been in the possession of Atzerodt two days before when he rode away from the stable where the horse had been kept on sale for some days. This witness also testified before the special commission, sitting there, that he had let the horse ridden by Herold, had attempted to intercept the rider on the avenue, had followed on his track as far as the Navy Yard bridge where the guard, after informing him that two horsemen one after the other had crossed a short time before, refused him the same privilege and he was compelled to relinquish his pursuit. He revealed, besides, the movements of Atzerodt the same night as heretofore described. Whereupon a dash was made on all the livery stables in Washington, the proprietor from whom Booth hired his fleet-footed mare found, and the partnership in the keeping and use of horses that had subsisted during

\* See Note I to chapter in Appendix. Also, Baker's *Secret Service*, 529; Stanton's telegrams in *N. Y. Herald* of Saturday the 15th; Stewart's testimony on C. T., Poore, II, 70, 79, 81; Ferguson's, I, 191.

† C. T., Toffey's testimony, Poore, I, 365, 418; S. T., 231.

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the pendency of the plot to capture between Booth and Surratt brought to light.\*

The emergence of the name of the youthful rider on the underground route in close connection with the arch-assassin seemed to furnish a solution of a problem that was puzzling the authorities. The perpetrator of the butchery at the Seward mansion had left behind him, besides his hat and his weapons, a well-marked trail, and even the horse he rode away on was in the hands of the soldiery; but the man himself had disappeared as though he had sunk into the earth. At first, indeed, it was thought that the murderer of Lincoln might have committed both assaults, and, at the moment when it came to light that Atzerodt had been in possession of the one-eyed charger, it was even conjectured that the wretched German, who displayed such distaste for the shedding of blood in the case of the Vice President, had distanced every competitor in that line in the case of the Secretary of State.† But, in the face of evidence pointing to so probable a conspirator as Surratt, such baseless surmises instantly fell to the ground. The real guilty party, being a total stranger to the capital, had been seen or heard of by no one outside of the Surratt house where he had been hidden, whereas Surratt enjoyed a large circle of acquaintances in Washington, his person could be readily identified, he fitted into the vacant rôle with providential nicety and his antecedents furnished plausible evidence of his guilt. So speedy and un-

\* C. T., Poore, I, 326, 173; II, 94.

† *N. Y. Herald* of April 15, 1865; Poore, I, 377; II, 22; S. T., 442.

doubting was the decision of the authorities that, in the small hours of Saturday morning, a squad of detectives surrounded the boarding house and searched every room in it; announcing to the awakened inmates that John Wilkes Booth had murdered the President and John Surratt the Secretary of State, exhibiting at the same time the bow of Lincoln's cravat spotted with blood. The frightened household assured the officers that Surratt had not been home for two weeks, his mother stating that he was in Montreal whence she had received a letter from him the day just past, dated on the twelfth, and that she had last seen Booth at two o'clock of the previous afternoon. Ordering the two male boarders—Wiechmann and Holahan—to report at headquarters at nine o'clock, the party left empty-handed and dissatisfied.\* In addition to this provisional identification of Surratt as an accomplice with Herold and Atzerodt, another discovery was made which put the authorities on the track of two more. In Booth's trunk at the National Hotel was found the letter written by Arnold withdrawing from the plot to capture and advising a reference to Richmond before further action;—an item of testimony sufficient, in the prevalent heat of pursuit, to settle the complicity of the writer as well as that of his comrade O'Laughlin, of whom he made mention. The letter did more—certain of its phrases were pounced upon by Stanton as confirmation strong of the colossal conspiracy which had already become a fixed idea in his mind.†

\* S. T., 394-5; *id.*, 698.

† C. T., Poore, I, 419; *N. Y. Herald, ut sup.* See letter of Arnold in Appendix, Note VII to Chap. I.

Thus passed this night of dread—its last dark hours made darker by a heavy rain. As the reluctant morning broke, the death of the President extinguished any glimmer of hope lingering in the depth of despair. At about nine o'clock his body was inclosed in a temporary coffin and carried through silent crowds standing in the streets, between buildings already black with crape, to the White House and laid in the East Room. The next day an autopsy was performed, which demonstrated that there could have been no gleam of consciousness after the fatal shot—the ball entering the back of the head to the left of the median line and below the line of the ear, plowing its way in an upward and diagonal course through the brain and lodging within half an inch of the right eye, the force of the impact fracturing the orbits of both organs of vision.\* The whole population seemed absorbed in the celebration of the obsequies of the martyred Chief Magistrate. All civil business was suspended. The new-made President took the oath of office with scant ceremony or none. On Wednesday, amid the tolling of bells and the discharge of minute guns, a resplendent procession escorted the funeral car to the capitol, where the open coffin lay upon a catafalque in the rotunda until the night of the succeeding day—thousands passing by to gaze once more on the face of the man to whose memory they did homage as the friend of all the people without distinction of color, state or section. Then the immortal dead was borne away to his late home over the same route the son of Illinois

\* See Note II to chapter in Appendix.

traversed coming to Washington as President-elect to take the oath of office.

But even the lamentation of the whole nation could not interrupt for an instant the pursuit of the principal in the crime that had caused it. A fiend in human shape, after striking down in the face of a crowded audience the chief of the state, had effected his escape from the place of blood; and, then, through unaccountable negligence, had slipped out of the intrenched capital. Whither had he vanished? To the guard at the Navy Yard bridge, a horseman whom he allowed to cross at about the hour of eleven had given the name of Booth; and a horseman who followed at the heels of the first had been identified as Herold by the man whom this Dogberry of a sergeant—vigilant at the wrong moment—stayed in his pursuit.\* A brigade of infantry, a thousand cavalry and more than two hundred detectives poured over into lower Maryland, reaching Surrattsville at eight o'clock Saturday morning and Bryantown in the afternoon, spreading far and wide the tidings of the assassination and the probable direction of the assassin's flight, but without hitting upon any further trace.† Following the same trail the detectives who had searched the house in H Street—taking the two male boarders with them—halted at the Surratt tavern at about noon, and one of them, having known the landlord when on the Washington police, plied him with promises of reward to put them upon the track of the fugitives; but

\* Poore, I, 251.

† Baker, 530.

Lloyd, though he had already heard of the assassination, swore that no persons could have passed that way during the night without his knowledge, following up his denial by starting the party on a road which led them back to Washington by the evening. There, the baffled band struck a fresh scent. Wiechmann, certain that Surratt was not in Washington on the fatal night, had seen in a newspaper of the morning that the assailant of Seward wore an overcoat similar to one worn by Atzerodt, and he led the officers to search the Pennsylvania House and, the next day, to travel to Baltimore in vain pursuit of that conspirator. But the room in the Kirkwood House having been broken into and the weapons concealed there found, showed that Atzerodt's intended victim was not the Secretary of State but the Vice President, and the authorities were thrown back upon the original assumption that the missing culprit could be no other than Surratt, whose home they ordered to be seized and for whose arrest and extradition they despatched the detectives, with Wiechmann and Holahan, to Canada, as soon as they came back from Baltimore.\*

At about half-past eleven o'clock that night (Monday) another raid was made upon the house in H Street. The four ladies, to whom the household was reduced, were huddled together in the parlor, destitute of male protection and a prey to undefined apprehensions. In response to the solemn salutation of the presumed leader of the invaders to the landlady: "I

\* Wiechmann in Poore, I, 377 and S. T., 396-7; Clarvoe, S. T., 701; Lee in Poore, I, 62.

come to arrest you and all of your house," there was nothing to do but with trembling fingers to don their outdoor apparel and prepare to depart. Just as the officer in charge was about to pass them out to the carriage that had been sent for to take them to General Augur's headquarters, a ring was heard and, the door being opened, a man in the guise of a day laborer stood upon the threshold. A sleeve of a woolen undershirt was drawn over his head, a pickaxe was on his shoulder and his boots, reaching high up over his trousers, were splashed with mud. He hesitated a moment and then said he came to see Mrs. Surratt. The officer pulled him inside and seated him in a chair behind the open door, while two of his men passed the ladies out, Mrs. Surratt muttering a few words which the officer did not catch. After they had gone, the intruder was put to the question. He said he was to dig a gutter for Mrs. Surratt and called to see at what hour he should go to work in the morning; that he was twenty years old, had left the South in February and taken the oath of allegiance to the United States, pulling out a form signed "Lewis Payne, Fauquier County, Va." The officer put him under arrest at once and, as soon as the carriage returned, sent him to follow the ladies; himself and others of the posse remaining until three o'clock in the morning searching the house for incriminating documents.\* At her arrival at headquarters, Mrs. Surratt was taken into an inner room where the special commission was sitting, and examined, her companions being left in the antechamber.

\* See Note in Appendix (III to Chap.).

When the rough-looking stranger was brought in, not one of the persons present was able to say that he or she had ever set eyes on him before. A conjecture that he might be Surratt so shocked that young man's sister that it was necessary to summon her mother to quiet her; and it was not until the sleeve was pulled off his head that Miss Fitzpatrick recognized him as a transient guest at the boarding house some time in March, passing under the name of "Wood." After the examination of Mrs. Surratt was over (its contents have never seen the light), she with her boarders were carried off to Carroll prison; and the bellboy at Seward's, being routed out of bed and brought to headquarters, declared in the most positive terms that the bedraggled newcomer was the fiery-eyed desperado who had made a shambles of the home of the Secretary of State.\*

On the same eventful Monday, O'Laughlin at Baltimore surrendered himself to the officers who he was told were in search of him, and Arnold was apprehended at Old Point Comfort, the latter acknowledging his participation in the abortive plot to capture, but disclaiming any knowledge of a design to kill.† They were forthwith brought to Washington and together with Payne confined in the hold of one of the monitors lying in midstream abreast of the Navy Yard, and loaded with double irons. Spangler, also, having been selected as the employee most likely to have assisted Booth in his preparations and in his escape, was sent

\* C. T., Poore, II, 31.

† *Id.*, 118, 230, 431, 434.

to keep them company, to be followed by Atzerodt, who was aroused from slumber in the early hours of Thursday at the house of his cousin, the officer making the arrest adding the man who sheltered him to the list of prisoners who were considered secure only when lodged below the surface of the Potomac.\*

Still, of the arch-assassin no further trace! The Secretary of War (on the twentieth) issued a proclamation, headed: “\$100,000 Reward! The Murderer of our Beloved President is still at large!”, offering “\$50,000 for his apprehension, in addition to any reward offered by municipal authorities or state executives” (aggregating over \$100,000 more); “\$25,000 for the apprehension of John H. Surratt, one of Booth’s accomplices; \$25,000 for the apprehension of David C. Herold, another of Booth’s accomplices; liberal rewards for any information that shall tend to the arrest of either of the above-named criminals or their accomplices”; warning “all persons harboring or secreting said persons or either of them, or aiding or assisting in their concealment or escape” that they “will be treated as accomplices in the murder of the President and the attempted assassination of the Secretary of State, and shall be subject to trial before a military commission and the punishment of death”; and closing as follows: “Let the stain of innocent blood be removed from the land by the arrest and punishment of the murderers. All good citizens are exhorted to aid public justice on this occasion. Every one should consider his own conscience charged

\* Poore, I, 357; II, 515.

with this solemn duty and rest neither night or day until it be accomplished.”\*

And this injunction was obeyed to the letter. The parties conducting the search, especially, gave themselves no rest night or day. Persons whom they suspected of screening the object of their pursuit underwent a bitter experience. Lloyd, still persisting in his denial, was locked up in an extemporized guardhouse and subjected to severe military pressure. Half mad with terror and drink, he broke down, confessing that at midnight on the fatal Friday Booth and Herold stopped in front of his tavern, Booth with a broken leg remaining on horseback and Herold coming in for whiskey and for the two carbines concealed in the house on the collapse of the plot to capture. As they rode away, Booth exclaimed, “I have murdered the President,” and Herold, “I have fixed Seward.” This tardy revelation settled Lloyd’s case with the officer who had him in charge, and he was sent on to Colonel Wells at Bryantown, who, after putting him on the rack again, remanded him to the prisons of Washington. Stopping at his home on the way, the wretched man shouted for his prayer book, crying “I am to be shot! That vile woman has ruined me!” and in this

\* The copy produced by Stanton before the Jud. Com. H. R. March 1, 1867, differs from the one produced on C. T., as given in Pitman 185 and in Poore in the Introduction, by including Surratt instead of Atzerodt. See *facsimile* in Oldroyd 185 and in “Four Lincoln Conspiracies” in *Century Mag.* for April, 1896. For additional amounts of rewards see Proc. in Baker’s book, 526; and note to article, “Pursuit and Death of Booth,” in *Century*, January, 1890. Com. Council of Washington offered \$20,000; Baker, \$10,000; 3 States, \$25,000 each.

besotted condition he was carried to the capital, where even in his cell the officers in charge gave him no rest.\*

Having thus at last struck the trail at Surrattsville and discovered, besides, that their prey was incapacitated from much farther flight, the pursuers pressed onward with renewed vigor until, at the residence of Dr. Mudd, they were met by information still more satisfactory. According to the doctor's statement, on Saturday, before daybreak, two horsemen rode up to his door, one of them so much disabled that he had to be carried into the house; an examination disclosed a transverse fracture of the outer bone of the left† leg, caused, as the companion of the wounded man stated, by a fall from his horse; the doctor set the leg as well as he could with splints cut from a bandbox, receiving twenty-five dollars for the service; after dinner the younger man, having left the patient in the upper room where they had rested in the meantime, went with the doctor to get a carriage in order that they might proceed on their journey, but finding none the youth returned to the house, the doctor riding on to Bryan-town and its vicinity to make his professional calls; on his return at about four o'clock in the afternoon both men were gone with their horses, a rude crutch having been made for the broken-legged rider. To the rapid fire of questions poured in on him, the doctor responded that both men were strangers to him; one—a mere lad in appearance—he was positive he never

\* Poore, II, 192, 215; Lloyd's testimony, *id.*, I, 115; *cf.* S. T., 290.

† There is some discrepancy as to this; but the boot slit open, preserved in the War Office is a *left* boot. *Cf.* Baker, Oldroyd and Mason.

saw before, the other he had glanced at in the dim light of the upper room where he lay, his head muffled in a shawl, exhausted from fatigue, faint with suffering, and speechless; the news of the assassination which he heard at Bryantown aroused no suspicion in his mind until he learned on his return that his patient had called for a razor and shaved off his moustache, and his wife told him that when he hobbled down stairs she detected that his whiskers were false. Fired by this precious intelligence and, in their eagerness to be gone omitting to name the men they were after, the officers plunged ahead along the route which the doctor pointed out to them, confident at every turn of bringing their precious quarry to bay. But, though they scoured every nook and corner of the vicinity, the crippled fugitive could not be traced. A watch was set at every ferry, gunboats were sent up and down the river, the entire territory between the Patuxent and the Potomac was overrun; but to no purpose. On Friday (21st) the baffled detectives, accompanied by a squad of cavalry, went back in no favorable mood to the dwelling of the man whom, as they had learned in the meantime, Booth had visited the fall before, but who, nevertheless, after binding up his wounds, had set the assassin on his undiscoverable way. The doctor, admitting that he met the actor at the time stated, professed to detect but little resemblance between the photographs of Booth and Herold, thrust in his face, and the two wayfarers who had invaded his household, thereby giving the exasperated detectives the impression that he was actuated by a desire to shield the

fugitives—an impression which the discovery of the boot he had cut off the broken leg, on the lining of which was the inscription "J. Wilkes —," deepened into absolute conviction. Orders soon came from headquarters for the doctor's arrest, and he was whirled away from his farm, his practice, his wife and four little ones to close confinement in Carroll prison.\*

His incarceration, however, left the whereabouts of the disabled assassin still shrouded in mystery. The whole country seemed to writhe in an agony of suspense. Was it within the bounds of possibility that the monumental crime of the age should pass into history unavenged? Astrologers swept the heavens; mediums called spirits from the vasty deep; clairvoyants lay entranced for clues; cranks, quacks and crack-brained enthusiasts swarmed. On street corners hysterical women overheard blood-curdling colloquies and, in every pallid, blackbrowed stranger under a sombrero, scented an assassin. Letters poured through the post office marking the precise spot where the fugitive lay hid and offering to deliver him to the ministers of justice for a consideration. Young men saw visions and old men dreamed dreams. To furnish evidence was to earn a crown of glory; to be a witness for the state was to take one's place among the heroes of the age. And, distancing every runner in the headlong race, was the detective—both of the police and of the soldiery—for whom the unpre-

\* See testimony on C. T., Poore, I, 258, 273, 301, 294; *Life of Mudd* by daughter, statements of Mudd and wife, p. 42; letter to President Johnson, 148; and *passim*.

cedented panic was indeed a godsend. Swelling the hue and cry, treading on each other's heels, crossing and confusing each other's tracks—far and wide they sped, panting for the enormous reward set before them. From Boston, from New York, from Baltimore, to the overcrowded capital they came. The prisons overflowed—full of “suspects”—not conspirators alone, but their relatives, friends, acquaintances and persons having had dealings with them; proprietors of theatres and their employees; actors from the north, the east and the west; livery-stable keepers, telegraph operators, blockade runners, male and female; rebel scouts and spies; whole households with their menservants and maidservants, black and white, and the stranger within their gates. To use the language of General Ewing, the counsel for Dr. Mudd: “The very frenzy of madness ruled the hour. Reason was swallowed up in patriotic passion, and a feverish and intense excitement prevailed most unfavorable to a calm, correct hearing and truthful repetition of what was said, especially by the suspected. Again and again the accused was catechised by detectives, each vieing with the other as to which should make the most important discoveries, and each making an examination with a preconceived opinion of guilt, and with an eager desire, if not determination, to find in what might be said the proofs of guilt. Again, the witnesses testified under the strong stimulus of a promised reward for information leading to arrest and followed by convictions.”\* On the twenty-third of April, as if

\* Pitman, 329.

he could lay bare the hiding place of the principal by heaping torture on his fettered accessories, the war minister issued an order: "That the prisoners on board iron-clads . . . for better security against conversation shall have a canvass bag put over the head of each and tied around the neck, with a hole for proper breathing and eating, but not seeing, and that Payne be secured to prevent self-destruction."\*

At this juncture, that veteran sleuth, La Fayette C. Baker, chief of the national detective police—as *Deus ex machina*—descended into the arena. Transferred from the state to the War Department on the accession of Stanton to the cabinet, this indefatigable public servant won the confidence of his new master by the utter disregard of due process of law with which he suppressed freedom of speech concerning the war. Summoned from New York, where he was on duty at the moment, the secretary placed at his command the entire resources of the department, with the injunction: "Baker, go to work. My whole dependence is upon you." Baker needed no urging; but, with the celerity and thoroughgoingness on which he plumed himself, went to work after a fashion of his own. In the first place, with a contemptuous indifference to the meagre results already attained, he resolved to start afresh—stipulating for the sole charge of the investigation and laying down a plan of operations so as to make sure of the whole credit of ultimate success and also of every dollar of the exceeding great reward.

\* Oldroyd, 84.

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The three counties lying between the Patuxent and the Potomac having been rummaged in every direction, he hazarded nothing in deciding that the aim of the fugitives must have been to cross the latter river so as to land at some spot on the Virginia shore as near as possible to the Rappahannock, to cross which river and turn west to the mountains of Kentucky or Tennessee was the only way of escape, the whole of south-eastern Virginia being virtually in the possession of the Union forces. Accordingly, Baker's first move was to send, on Sunday the twenty-third, two of his men (with a telegraph operator and apparatus furnished by the War Office) to Port Tobacco, to reconnoitre and open communications. Immediately on their arrival one of the detectives ran across an old negro who stated that, on Saturday night, near Swan's Point, he saw two men resembling the descriptions of Booth and Herold, one of them lame, entering a small boat to cross the river. The black man was taken immediately to Washington and examined by Baker, with the result that an application was made to General Hancock, the commander of the District, for a detachment of cavalry numbering twenty-five men. This force, under the command of Lieutenant Edward P. Doherty, reported for duty at the headquarters of Baker in the afternoon of Monday (the 24th) and was placed under the leadership of two of Baker's most experienced subordinates—Everton I. Conger and Lewis Byron Baker—whom their chief, having traced on a map a line he divined the assassins had taken after crossing into Virginia, ordered to proceed at

once to Belle Plain on the Virginia side of the Potomac, seventy miles below, and from that point prosecute the search throughout the whole region until they reached Port Conway on this side of the Rappahannock. The party sailed on the steamboat *John S. Ide*—set apart for this service by the government—at four o'clock and disembarked at Belle Plain at ten. The remainder of that night and the following day until three or four o'clock in the afternoon were spent in harrying the twenty-five or thirty miles of territory intervening, but it was not until they arrived at the designated terminus of their route that they met the first unmistakable traces of the objects of their tireless pursuit.\*

Here let us leave them while we turn back to follow the course of the fugitives up to this moment, as that course was afterwards revealed.

So skilfully was the assassin's plan of flight adapted to his physical make-up and habits of life, that, had it not been for a mishap which was wholly fortuitous, he would have crossed the Potomac not later than Saturday night and put himself beyond reach of immediate pursuit, if not of eventual capture. But, providentially as we are taught to say, the actor's spur caught in the flag of the country whose ruler he had just slain, and, noted as he was for his extraordinary leaps on the stage, this once he tripped, and in so doing broke his leg. That he was able to rise upon his feet, fly across the boards, mount his steed and endure the tortures of

\* Baker's *History of U. S. Secret Service*, 527, 532.

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the mad gallop on the city pavements—the splintered bone “tearing his flesh at every jump”—was a marvel of fortitude. Before he got over the ten miles to Surrattsville, he was forced to exchange his fleet-footed mare for Herold’s roan, which was a saddle horse of the “racker” variety.\* In search of surgical aid he diverged seven or eight miles out of his direct route and lost twelve hours of daylight before he could venture to resume his hobble towards the river of his hopes. He lost his way in the barren marshes to the south of Dr. Mudd’s and was rescued by a negro who carried him in his wagon about fifteen miles to the residence of Samuel Cox—a prominent sympathizer with the South, who in all probability had been cognizant of the plot to capture—where he was within four or five miles of the Potomac. Here, in the early hours of Sunday, his forty-five mile race for life came to an end. He could go no farther, either by horse, wagon or afoot. For thirty hours he had been upon the rack and he could endure the incessant agony no longer. The master of the house, on whose threshhold he lay, having heard of the terrible event of Friday night, refused to admit stragglers at such an hour; and, with his companion and the horses, he was driven to seek such shelter as he could find in the open air. After sunrise, Cox, in view of the helpless plight of one of the outlaws, relented so far as to conduct them to the centre of an almost impenetrable thicket of short pines, a mile or two from his premises, and to persuade his foster-brother, Thomas A. Jones, to take

\* Poore, I, 255; Lloyd’s testimony on C. T., Poore, I, 130.

measures to transport them across the river and to care for them in the meantime. Here they languished for six long days and five longer nights, a prey to undefined fears and unspeakable misery; Booth lying on the ground, his illset limb irritated to the verge of mortification by his long ride; Herold loitering about with his carbine, on watch for the possible approach of the hunters, hearing in the distance the occasional tramp of cavalry, and driven at length to shoot the two horses that had carried them so far lest the neighing of the animals betray their whereabouts. Jones belonged to a well-known type of Southern manhood: cool, reticent, absolutely fearless, ready to lay down his life for a cause once he had espoused it; incapable of entertaining the thought of deserting any enterprise he had undertaken, no matter how perilous or even hopeless it might become. He watched over the fugitives while he scanned the river for a propitious moment for them to cross; a slave who had spurned the boon of freedom, to tread in the footsteps of his master, carrying their food and holding in readiness for their use the boat which he fished in by day and hid on shore at night. Jones, who had been the chief agent on the Maryland side of the underground mail between Richmond and points north, kept Booth supplied with the current newspapers, the reading of which must have superadded mental, to his physical, anguish.\* To give vent to his feelings as well as to wile away the heavy-laden hours, he scribbled with a pencil on the blank leaves of his pocket diary of the

\* See account by George Alfred Townsend in *Century* for April, 1884.

last year an appeal to posterity: an appeal which might never have reached its destination had not the sedulous concealment of the book on the Conspiracy Trial and its mutilated state when unearthed, led to its production on the impeachment proceeding against President Johnson. The first entry begins:

“April 13, 14, Friday, the Ides. Until to-day nothing was ever thought of sacrificing to our country’s wrongs”; (obviously, these words could not have been written before the writer had caught sight of the newspapers, which he had no opportunity to do until he reached his present asylum). He goes on: “For six months we had worked to capture. . . . I struck boldly, and not as the papers say. I walked with a firm step through a thousand of his friends; was stopped, but pushed on. A colonel was at his side. I shouted *sic semper*, before I fired. . . . I can never repent it though we hated to kill. . . . This night (before the deed) I wrote a long article and left it for one of the editors of the *National Intelligencer*, in which I fully set forth our reasons for our proceedings. He or the govnt—” (Here, apparently, the writing was laid aside to make an attempt to cross, as he resumes): “Friday 21. After being hunted like a dog through swamps, woods and last night chased by gunboats till I was forced to return wet, cold and starving, with every man’s hand against me, I am here in despair. And why? For doing what Brutus was honored for—what made Tell a hero. . . . The little, the very little I left behind me to clear my name, the Govnt. will not allow to be printed. So ends all. . . . I have only heard of what has been done (except what I did myself) and it fills me with horror. . . . To-night I will once more try the river with the intent to cross. I have a greater desire and almost a mind to return to Washington

and clear my name which I feel I can do. . . . To-night I try to escape these bloodhounds once more. . . . I have too great a soul to die like a criminal. . . . I do not wish to shed a drop of blood, but 'I must fight the course.' 'Tis all that's left me.''\*

In the dusk of this same evening, with two seven-shooting revolvers and his blood-stained knife in his belt, his field-glass slung over his shoulder, still clinging to his crutch, resolved to die before being taken alive—he is lifted on a horse and, with Herold carrying the carbine and Jones leading the way, is guided through the dense undergrowth and down a steep ravine to the water's edge, placed in the stern of the boat brought from its hiding place by the faithful negro, and, Herold taking the oars, launched on the surface of the stream. The Potomac, at this point three or four miles wide, having made a mighty sweep to the east and then to the south, the exhausted men, after rowing all night, find themselves ten miles up the river and still near the Maryland side. Forced to lie hid in the swamps of the Nanjamoy Cove during the hours of daylight, they push off again when darkness comes, descend the river, passing their starting point of the night before, and, early Sunday morning, land at last on the Virginia shore five miles below. A lady living on the bank furnished them with means of transportation to the cabin of a Mr. Bryan, where, after stopping during a portion of the day, they were taken by him to the country residence of Dr. Richard

\* Cf. version in Imp. Inv., 286, with one in S. T., 310. *Facsimile of close in Century, April, 1896.* See testimony of Holt on Imp. Inv., 28, 285.

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Stewart, some eight miles inland, reaching there at seven o'clock in the evening. The doctor, having repeatedly suffered arrest on the charge of aiding the rebellion, at this crisis was in no humor to risk his neck by harboring possible assassins, and he denied them admittance, though he provided them with supper and directed them to a hut on his premises occupied by a negro, named Lucas, where they passed the night. From this squalid lodging, the actor, so recently "the glass of fashion and the mould of form," despatched a note to the doctor written on a leaf from the diary, the tone of which may serve to show that neither crime, nor wounds, nor suffering, nor banishment, not even the imminence of capture and a felon's doom could quell the vainglorious self-consciousness of this hero of the boards:

"DEAR SIR: Forgive me, but I have some little pride. I hate to blame you for your want of hospitality; you know your own affairs. I was sick and tired, with a broken leg, in need of medical advice. I would not have turned a dog from my door in such a condition. However, you were kind enough to give me something to eat, for which I not only thank you, but on account of the reluctant manner in which it was bestowed, I feel bound to pay for it. It is not the substance, but the manner in which kindness is extended, that makes one happy in the acceptance thereof. The sauce in meat is ceremony; meeting were bare without it. Be kind enough to accept the enclosed two dollars and a half (though hard to spare) for what we have received."

April 24, 1865.  
To Dr. Stewart

Yours respectfully,  
Stranger."\*\*

\* See Note IV to this chapter in Appendix; Imp. Inv., 677; S. T., 402.

The next morning (Monday the 24th) Lucas drove his unwelcome guests the twelve miles to Port Conway, arriving there about half-past nine o'clock, where they tried to engage a fisherman who lived close by the river (Rollins by name)\* to take them across to Port Royal on the opposite side; but, before he got ready to do so, three Confederate cavalrymen coming home from the war—Jett, Ruggles and Bainbridge—hailed the ferry, and, after a parley with them, Booth and Herold were poled across by the negro ferryman in company with the officers—Booth astride one of their horses. Three miles farther on, Booth was left, under the guise of a wounded Confederate by the name of Boyd, at the residence of Richard H. Garrett, and Herold went on with the soldiers to Bowling Green, thirteen miles distant. The next day (Tuesday) Herold came back in company with Ruggles and Bainbridge as far as Garrett's, where he joined his leader; the two officers riding on toward Port Royal until hearing that the place was alive with Union soldiers searching for the assassins, they hid themselves in the woods. That afternoon a troop of cavalry passing along the road so frightened Garrett that he urged the instant departure of his questionable guests, who thereupon sought refuge in a plantation in the rear of the house, but after nightfall returned, pleading for shelter, and were given lodgings in a tobacco warehouse on the premises by one of Garrett's sons, who,

\* Testimony is discrepant as to the rôle of Rollins and who the ferryman was. The clearest witness is L. B. Baker on S. T., 317. See Ruggles' narrative in *Century* for January, 1890, and Oldroyd, 302.

apprehensive they might make off with his father's horses, locked them in and remained on the watch in a corn-crib near by.

We now return to Baker's men, who struck Port Conway about noon the day after their quarry crossed the Rappahannock. Rollins recognized the photographs of Booth and Herold shown him by one of the detectives as those of the two men who had tried to hire him to put them over the river and were in fact ferried over in company with the three Confederates, one of whom (Jett) he knew as a visitor at Bowling Green. He was immediately impressed into the service as guide, and the whole party of nearly thirty men with their horses were hurried aboard the scow, nearly swamping the boat in their passage. On they sped for Bowling Green, passing the Garrett homestead that stood in a clump of trees back of the road, where Booth caught a glimpse of the riders as he lay on the lawn. Jett was seized in his bed at midnight, forced at the point of a pistol to disclose the whereabouts of the fugitives he had aided the day before and then to guide the officers to the spot. Back they go, reaching Garrett's at two o'clock Wednesday morning. Aroused from slumber by the inrush of mounted men, the owner of the mansion tremblingly protested that the two strangers had gone to the woods; at which unwelcome tidings the leader of the band called for a rope to hang the old man on one of his own trees. To save his father, the son came forward and pointed to the building in which the outlaws lay hidden; and with an

exultant shout the whole force surged forward and invested the last refuge of their priceless prey.\*

The warehouse was sixty feet square, empty save for a few articles of household furniture and some loose straw and hay in one corner; having large double doors in front and open spaces four inches wide in the boarding on the sides, to air the tobacco when the structure was in use. All was dark and still inside. Lieutenant Baker advanced to the front and, taking the key from young Garrett, unlocked a small door in one of the large doors, opened it, and pushed the reluctant boy inside, who was immediately driven back by a threat to take his life. Thereupon, raising his voice, Baker spoke: "We have fifty armed men around the barn and unless you surrender we will set fire to the building." Out of the darkness within came the response: "Captain, give a lame man a chance. Draw up your men before the door and I'll come out and fight the whole command." This foolhardy challenge being put aside with the remark that they "came not to fight him, but to take him prisoner," the voice was heard again: "Well, my brave boys, you can prepare a stretcher for me." In the meantime, the cavalrymen had dismounted and, two by two, led the horses out of range of the threatened fire; but, exhausted as the men were from having been in the saddle without sleep or rest since Monday night, instead of taking their stand to guard the rear and sides of the building, they dropped down promiscuously under the trees; and it was with the utmost difficulty that Conger could pre-

\* Garrett's testimony, S. T., 302.

vail upon as few as six of their number to sit upon rails placed not less than thirty feet from the warehouse. While this movement was being executed the strain had become too much for Herold, and, after a parley over the surrender of his arms which Booth claimed as his own, he was pulled out emptyhanded by the wrists and passed over to Doherty, who tied him to a tree. Conger, then, leaving positive orders that not a soldier should come nearer than the prescribed distance, and under no circumstances to fire a shot, started from the front around to the right to the corner in the rear, and, inserting a lighted wisp of straw, set fire to the stubble on the floor. As the flames lit up the lofty interior, Baker caught sight of the trapped tragedian as he was about to make his final exit. Just risen from his bed of straw, with a crutch under his left arm and the carbine in his right hand, Booth was in the act of starting towards the fire, peering through the interspaces to catch sight of the invisible foe. He caught up an old table as if to throw it on the blaze but dropped it and, looking up, saw the flames mounting to the roof. "Then he seemed to give it up"; and his countenance fell. Dropping his crutch and passing the carbine to his left hand, he drew his revolver and, "with a kind of limping, halting jump," advanced within twelve feet of the door where Baker, unseen by him, was awaiting his approach; and, there, stood for one brief moment—encompassed by armed men, to every one of whom, in the light of the fire, he was an easy mark—weighing the supreme alternative before him; should he "live to be the

show and gaze of the time," "be baited with the rabble's curse," or should he die by his own hand?

A pistol shot breaks upon the smoky air. The actor with an upward spring falls on his back. Baker is upon him in an instant, twisting out of his clenched hand the revolver; the carbine having fallen between his legs. Garrett is the next man to enter, calling for help to put out the fire. Conger rushing in exclaims: "He shot himself." Baker answers: "He did not. You shot him." Conger rejoins: "I did not"; and, pointing to the wound in the right side of the neck whence the blood was oozing, reiterates: "Yes, sir; he shot himself." Baker persists, saying "He did not. I saw him the whole time, and the man who shot him goes back to Washington under arrest."

Doherty, having disposed of Herold, here comes in, takes possession of the carbine and the weapons in Booth's belt; and the apparently inanimate body is dragged out of reach of the flames and laid under a tree. Signs of life reappear, the parched lips murmuring: "Tell, mother—tell mother—I die for my country." The captive is carried to the porch of the house and a physician is sent for to Port Royal. On his arrival, discovering that the ball had passed through the neck-bone "perforating both sides of the collar," he gives his opinion that the patient cannot live more than an hour. Thereupon, Conger, in haste to be off with the momentous tidings, and his colleague, each kneeling on one side of the still breathing man, rifle his pockets and his person, Booth mumbling once and again, "Kill me! Kill me!" until he relapses

into unconsciousness which at about seven o'clock deepens into death. The breath was hardly out of the body before Conger, with the articles taken from it tied up in a handkerchief, is in the saddle bound for Belle Plain; and, catching the regular steamer there for Washington, reached the headquarters of his chief at four o'clock in the afternoon. Thence the two officers hurried to the War Department and, Stanton having gone home, to his residence, and there announced the capture and death of the assassin. The handkerchief was opened, the articles examined, and Stanton, retaining the diary, confided the rest to General Baker. That redoubtable officer was further marked out by the head of the War Office as entitled to the credit of the glorious success, by being ordered to board the monitor *Montauk*, sail down the river to meet the steamboat coming up with the captives—the living and the dead—and have them transferred to the vessel of which he was in charge.

As soon as Booth was dead, his body was sewn up in an army blanket and, with the weapons on his person when he fell, put into an old market wagon driven by a negro and started for Belle Plain; the cavalry escorting and Herold following on foot until he could walk no longer, when he was tied on a horse. At six in the evening the cavalcade reëmbarked on the *Ide*, met the monitor halfway to the capital, followed in its wake until they reached the Navy Yard, where, on Thursday morning, at two o'clock (the 27th), the transfer was made, the corpse being laid on the deck and Herold joining the double-ironed and canvass-

bagged prisoners in the hold. Later in the day a post-mortem examination was made for the purpose of identifying the body as Booth's beyond question; and the surgeon-general removed the perforated section of the vertebrae for preservation as a national momento. In the dead hours of the night, under the superintendence of the chief of the detective force, the remains were lowered into a boat, rowed over to the arsenal grounds, placed in a gun box and buried beneath the pavement of a large cell on the ground floor of the Old Penitentiary, the iron gate locked and the key delivered to Stanton. No effort was spared to conceal the time, place and circumstances of the burial. False stories were set afloat more effectually to further this purpose. From earth, air, river or ocean, no relic should be filched to be made the subject of rebel glorification.

Who fired the shot that baulked the complete vengeance of an outraged people? This question, to settle which beyond controversy the authorities were in possession of evidence abundant and conclusive, they preferred to let rest upon testimony inconclusive, impeachable and contradictory.

Booth was carried out of the burning warehouse and laid upon the porch of the Garrett homestead between three and four o'clock in the morning, and during the interval that elapsed before the arrival of a physician, Conger went in search of the soldier who, his colleague insisted, in direct defiance of his orders, anticipated the suicide of the fugitive at the moment his capture

was certain. He found the offender in the person of Boston Corbett, the first sergeant of the company from which the detachment of cavalry was drawn,—a strict disciplinarian, “with an odd expression of countenance,” a gloomy disposition, eccentric habits, an extravagant estimate of his own importance, and, in any cause he espoused, earnest to the point of fanaticism. When called to account for shooting without orders, he drew himself up, saluted and said: “Colonel, Providence directed me”—a line of defence that “rather non-plussed the colonel,” who decided “to let Providence and the Secretary of War take care of him.” When arraigned by Doherty, his immediate superior (if that officer is to be believed), he invoked no supernatural authority, but pleaded that seeing Booth holding his carbine as if about to shoot, he fired to disable him in the arm, but the bullet miscarried and struck a spot corresponding to the one where the assassin’s entered the head of Lincoln;—another providential interposition, as the lieutenant appears to have considered—this time, however, not inspiring the shooter but guiding the ball. Corbett’s story, highly improbable because of the relative position of the parties, and uncorroborated by the testimony of a single witness out of the twenty-four comrades presumably on the watch, seems to have been accepted without question. The only alternative solution was suicide—a mode of death regarded by captors, authorities and the people at large as too heroic for such a monster in crime. The offending sergeant did not go back to Washington under arrest. So far from re-

penting of his insubordination, he gloried in his deed. He was used by the government as a witness before the Military Commission, where, only twenty days after his boasted exploit, he testified that "from his desperate replies" he knew the "man would not be taken alive." "My impression was it was time the man was shot, and I took steady aim on my arm and shot him through a large crack in the barn." Because, as he further said, improper motives had been imputed to him for his act, he embraced the opportunity to set himself right. "I twice offered to my commanding officer, Lieutenant Doherty, and once to Mr. Conger to go in the barn and take the man; . . . that it was less dangerous to go in and fight him than to stand before a crack exposed to his fire; . . . but I was not sent in." (An incident of which we hear nothing from the testimony of the three officers themselves.) "It was not through fear at all that I shot him. . . . I thought he would do harm to our men in trying to fight his way out through that door if I did not." Unrebuked, he left the stand to start on a triumphant tour over the North, everywhere welcomed as an avenger of blood. He received his proportionate share of the reward for the capture, notwithstanding (if his story is to be believed) it was his own wanton act that saved the captive from paying the penalty of his crime. For him, the Secretary of War smoothed his terrifying front. Providence, the other authority to whom his commanding officer consigned him, was not so favorable. In after years, having been appointed doorkeeper of the Kansas House of Repre-

sentatives, he tried his skill with the pistol in an effort to exterminate the entire membership of that body and, in consequence, landed in a lunatic asylum.

On the other hand, the government made no effort to countervail the presumption of suicide raised by certain incidents of the capture. Lieutenant Baker, the first to reach the fallen man, twisted out of his right hand a tightly clenched revolver, a seven-shooter, and must have noticed whether it had just been fired or not. He was not asked the question, and was not even sworn before the Military Commission. Colonel Conger supposed Booth had shot himself and with that impression examined the wound as soon as he entered the warehouse; and he testified: "He had the appearance of a man who had put a pistol to his head and shot himself—shooting a little too low." The autopsy should have disclosed the calibre of the pistol and the size of the ball with which the wound was inflicted; the War Department having possession of Booth's weapons might easily have shown whether or not one chamber of the revolver was empty, as it was asserted at the time it was. But the autopsy, so far as the evidence discloses, amounted to but an identification of the corpse; and it does not appear that the pistol, with which the assassin might have carried out his resolve never to be taken alive, was ever examined.

When Robespierre was captured—"a pistol clenched convulsively in his hand"—a young *gendarme* named Meda claimed the honor of having fired the shot that shattered the underjaw of the hated triumvir. On

this claim, Carlyle remarks: "Meda got promoted for his services of this night and died General and Baron. Few credited Meda in what was otherwise incredible." Mr. John Morley declares: "Whether Robespierre was shot by an officer of the Conventional force or attempted to blow out his brains we shall never know." The two cases furnish a striking parallel. The immense weight of odium under which the captive was laboring; the beckoning opportunity to pose as the instrument of a nation's justice; the indications and the likelihood that the wound was self-inflicted; the popular revulsion from any such hypothesis and the consequent eagerness to welcome a candidate for the glory of the deed—features unique in their concatenation—all these were common to both. In the case of Robespierre, however, there was some semblance of investigation; in the case of Booth, there was none.\*

\* See Note V to this chapter in Appendix, where the authorities on which the foregoing narrative is founded are given.

## CHAPTER IV

### THE CONSPIRACY TRIAL

IN the very focus of the hurlyburly of pursuit occasioned by the disappearance of the assassin, that branch of the War Department yclept the Bureau of Military Justice, presided over by Joseph Holt, the judge advocate general of the army, was steadily at work gathering in and manipulating witnesses and accumulating testimony in support of the hypothesis fixed upon to govern the prosecution. That the calamity stunning the nation in the hour of victory was the work of a half-crazed actor and his madder tool, seizing favorable opportunity to murder the President in the theatre and the Secretary of State in his bed, was a solution altogether too commonplace to find harbor in the overheated imaginations of the managers of that institution. So stupendous a crime must have had its origin in the rebellion—in itself a gigantic assassination; must have been the outcome of months if not years of preparation, numbering adherents high and low in every part of the continent from Montreal in the north to Richmond in the south. On the morning of Lincoln's death, Stanton advised the American minister at London: "The murderer of the President has been discovered and evidence obtained that these horrible crimes were committed in execution of a conspiracy deliberately planned and set on foot by rebels

under the pretense of avenging the South and aiding the rebel cause." The theory of the prosecution was set forth by its special counsel: "Because Abraham Lincoln had been clear in his office, . . . he must be murdered; because Mr. Seward . . . had thwarted the purpose of treason to plunge his country in a war with England, he must be murdered; because . . . Andrew Johnson would succeed to the Presidency . . . he must be murdered; because the Secretary of War had taken care that the republic should live and not die, he must be murdered." Already convinced that Jefferson Davis and his agents were guilty of such atrocities as starving Union prisoners, smuggling clothing infected with yellow fever and smallpox into Union cities, planning to dump strychnine and prussic acid into the New York reservoir and actually attempting to set the city on fire, Stanton and Holt had no reason to presume that such case-hardened traitors would shrink from plunging into assassination by the wholesale; and their minds, in consequence, were in a condition to receive with facile credulity and lucrative welcome every scrap of testimony looking in that direction which the expert purveyors of such wares offered for sale in open market. The chief of these was Sanford Conover, who had already served as a spy on the Confederate agents in Canada, passing among them as a congenial spirit under the name of James Watson Wallace. Of this accomplished perjurer, it suffices for the present to say that, in his long career of iniquity before he finally came to grief, he never failed to bring back to the tribunal, blind enough

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or reckless enough to accept his service, precisely the kind and quantity of testimony he was sent to get, even if he had to back it by his own overtired oath. What started the flight of such unclean birds for the harvest fields of the British province, however, was not altogether the figment of a fevered imagination. The evidence of "a conspiracy deliberately planned and set on foot by the rebels," which the Secretary of War informed the court of St. James's had been obtained as early as the morning after the assassination, could have consisted alone in the letter signed "Sam," found in Booth's trunk, which proved the pendency for an indefinite period prior to its date in March of a conspiracy with which the authorities at Richmond might have had something to do. This something, it is true, was little but, in this time of stress, enough. Here was a conspiracy of dimensions suited to the catastrophe; and it mattered little that the conspiracy, as it developed, appeared to be a conspiracy not to assassinate but to capture the President, the failure of which, besides, antedated the collapse of the rebellion —a result which was the direct antecedent of the assassination. The prosecuting authorities were in no humor for nice distinctions and they seized upon the position as invulnerable that a plot to capture was equivalent to a plot to kill, participation in the one being proof of participation in the other. Macaulay, speaking of the incipient plans for revolt against Charles II in the last years of the reign of that monarch, remarks: "There were two plots, one within the other. The object of the great Whig plot was to

raise the nation in arms against the government. The lesser plot, commonly called the Rye House plot, in which only a few desperate men were concerned, had for its object the murder of the King and the heir presumptive. . . . That only a small minority had admitted in their minds the thought of assassination is fully established; but as the two conspiracies ran into each other, it was not difficult for the government to confound them together.” And John Richard Green, treating of the same incident, concludes: “Both projects were betrayed, and though they were wholly distinct from one another, the cruel ingenuity of the crown lawyers blended them into one.”\*

In the present instance there was an additional incentive to the exercise of the same “cruel ingenuity” on the part of the prosecution. Death had snatched the arch-assassin from their grasp; Payne, Atzerodt and Herold they might have hung “in a corner,” with none to call in question the validity or justice of the process. But an expiation so unspectacular would have been but a sorry afterpiece to a world-historic tragedy. To fill the measure of the people’s vengeance, they must bring within the sweep of the sword of the republic every participant, high or low, far or near, active or passive, from the fugitive president of the moribund Confederacy, his cabinet ministers and his agents in Canada, down to the lackey who swept out the building within whose guilty walls the tragedy was enacted. “The agreement and combination,” so the special judge advocate insisted, “was not to kidnap”

\* Macaulay’s *Hist.*, Vol. I, Chap. II, 208-9. Green’s, III, 451.

—a conspiracy, by its very name, restricted to a single victim—“but to kill and murder Abraham Lincoln, William H. Seward, Andrew Johnson, Ulysses S. Grant, Edwin M. Stanton and others of his advisers”; —a conspiracy susceptible of enlargement so as to embrace the entire staff of the executive.\*

This obstinate insistence on the identity of the two plots was exemplified remarkably in the treatment of the case of John H. Surratt. That this young man was deeply implicated in the plot to capture, the evidence was abundant; but it was equally so that, after the failure of the plot and the departure of the President to the front, he left Washington for Richmond and did not return until the night of the day Richmond was evacuated and then only to pass directly through Washington on his way to Montreal. His association with Booth since the beginning of the year appeared to have been so close as to point him out as the assailant of Seward and to cause the arrest of his mother and every inmate of her boarding house. Yet, at the same time, it was apparent that the association came to an end with his departure from Washington, and the discovery of Payne left him with no part to play on the fatal night. Nevertheless, the prosecution could not afford to lose the benefit of the mass of proof that clustered around the house in H Street. The meetings of the conspirators there, though not extending into the month of April, were nevertheless construed to be the meetings of assassins, and the pretence

\* Bingham's argument in Pitman. See Note I to this chapter in Appendix.

of a plot to capture should not avail to mitigate their common guilt.

When, therefore, after an absence of twelve days, the posse sent to Canada in pursuit of Surratt returned with the tidings that the culprit had left Montreal the day before the assassination to come back the Tuesday after, the fate of the two male boarders at Mrs. Surratt's—drafted into the service of the expedition—hung trembling in the balance. Against Holahan, however, the severest scrutiny failed to detect a single criminating circumstance; but, on the other hand, against Wiechmann they cropped out on every side. A clerk in the War Department, he was the roommate of Booth's chief of staff, the favorite boarder of the lady of the house, and hail-fellow-well-met with every visitor of her son. The day after he reached Washington from Canada he was summoned to appear before the War Minister—then in the mood of "the enraged Northumberland." The details of the interview must be left to the imagination. Doubtless, but one alternative was held out to him—to make a clean breast of it or join his former companions in the hold of the monitor. A stenographer being called in, his statement was taken down and sworn to. As he had not seen his chum since the night in April when Surratt passed through Washington on his way to Montreal, his testimony against the son went no further than to connect him with the plot to capture, on which point it was not needed; but he was able to furnish two items of evidence tending to implicate the mother in the assassination. He had driven his landlady twice dur-

ing the fatal week to her old place in the country,—on Tuesday and Friday, on the later date carrying a field-glass which Booth left that afternoon at her house for the purpose, and which he called for at the tavern in his flight. At the close of the examination, his stern inquisitor said: “Mr. Wiechmann, for your safety in this thing, you will have to go to Carroll prison”; and to Carroll prison Mr. Wiechmann went, “laboring under a great deal of excitement and under a great deal of nervousness” (as he himself says and we may well believe)—there to be warned “by an officer of the government” “that unless he testified to more than he had already stated they would hang him, too.”\*

The right arm of the Bureau in its work of preparation was La Fayette C. Baker, the detective who had so highly distinguished himself in planning the capture of Booth and whose methods are thus described by a writer of the day: “He made himself thoroughly conversant with the associations and habits of the chief actor’s acquaintances in Washington, Baltimore, Montreal and other cities. Some were promptly arrested; a careful espionage was established over others; confidential agents were sent far and wide, and some of them in disguise; the magnetic telegraph and the photographic camera were called into the service for the transmission of intelligence and the multiplication of portraits of identification”; and (what by these efforts was a matter of course) “it was not long before the proofs of a conspiracy organized

\* S. T., 446, 820, 836.

at Richmond and perfected in Canada were overwhelming.”\* Baker in his book states that Stanton’s despatch to the Associated Press awarding him “the honor and prestige of the capture induced all those previously engaged in the search to immediately abandon the whole case. Evidence to convict the assassins had yet to be obtained. On my bureau devolved the task of procuring, compiling and arranging the testimony. I subpoenaed for the prosecution and defence more than two hundred witnesses.”† And yet, of this Atlas of the prosecution, when, but little more than two years afterwards, he was devoting his unrivaled powers to implicate President Johnson in the assassination, a minority of the judiciary committee of the House of Representatives reported as follows: “Although examined on oath, time and again, and on various occasions, it is doubtful whether he has in any one thing told the truth even by accident. . . . And we are glad to know that no one member of the committee deems any statement made by him as worthy of the slightest credit. . . . Clothed with power by a reckless administration, and with his unprincipled tools and spies permeating the land everywhere, with uncounted thousands of the people’s money placed in his hands, . . . this creature not only had power to arrest without crime or writ, and imprison without limit, any citizen of the republic, but that he actually did so arrest thousands all over the land.”‡

\* Poore’s *Introduction*.

† *Hist. of Secret Service*, 563.

‡ Imp. Inv., p. 111 of *Reports*.

Such were the means and such the instruments employed in the procurement of witnesses to establish the charges drawn up by the judge advocate general. It remained to provide a tribunal to hear and determine. That the accused were entitled—every one by himself—to a trial by jury in the civil courts of the District was a proposition inadmissible by the authorities because incompatible with their entire scheme of procedure. In the first place, the whole array of conspirators must be arraigned at the same time; and, in the next, the disloyal element in the vicinage must be allowed no chance to put in jeopardy the anticipated verdict. What the crisis demanded was a tribunal that would be troubled with no technicalities of constitutional law, no pedantic adherence to the rules of evidence or by that obnoxious creation of legal metaphysics—a reasonable doubt; in short, a court, the members of which would submit without demur to the guidance of the prosecuting officers. Accordingly, on the first day of May, President Johnson ordered the assistant adjutant general to detail nine officers of the army to serve as a military commission to try all persons implicated in the murder of their late commander-in-chief and “in a conspiracy to assassinate other officers of the federal government”; and, the members having been picked out by the Secretary of War, they were summoned to meet at Washington on the ensuing Monday. On the second, the President issued a proclamation, which, after reciting that “it appears from evidence in the Bureau of Military Justice that the atrocious murder of . . . Abraham Lin-

coln and the attempted assassination of William H. Seward . . . were incited, concerted and procured by and between Jefferson Davis, late of Richmond, Virginia, and Jacob Thompson, Clement C. Clay, Beverly Tucker, George N. Sanders, William C. Cleary and other rebels and traitors against the government of the United States, harbored in Canada,"—offered the following rewards: "\$100,000 for the arrest of Jefferson Davis," and \$25,000 for the arrest of every one of the others named, except Cleary, "the late clerk of Clement C. Clay," for whose arrest \$10,000 were offered; and, thus, having provided the requisite tribunal and the proper machinery to apprehend the conspirators still at large—from the number of persons undergoing confinement, those whom the Bureau had pitched upon to be put upon trial were segregated in the Old Penitentiary, under the ground floor of which Booth lay buried. A room on the top floor was fitted up to do duty as a temple of justice; for, in this instance, instead of the prisoners being taken to the court, the court was to be taken to the prisoners.

On Wednesday, the tenth day of May, the commission, as finally constituted, held its first session. As it happened, at the dawn of this day Jefferson Davis was captured; and Clay, within twenty-four hours, surrendered himself to the authorities. No postponement, however, was asked for to allow these two notable captives to be added to the group of conspirators to be brought to the bar; on the contrary, hurried off to the casemates of Fort Monroe they were tried and found guilty in their absence. The court

room was but a larger cell in the penitentiary; forty-five feet in length by twenty in width, its ceiling eleven feet high supported by wooden pillars standing along the middle line of the floor and its four windows grated with iron. The members of the commission, in full uniform, were ranged about a table near the eastern end and parallel to its north side—Major General Hunter (fresh from the grave of his beloved friend and commander, whence he had hurried to preside over the court) sitting at the head; on his right, Generals Wallace and Ekin and Colonel Tomkins; on his left Generals Kautz, Foster, Harris and Howe and Lieutenant-Colonel Clendenin. At the foot of this table was another, at which sat Joseph Holt, the judge advocate general, John A. Bingham, the special assistant judge advocate and Henry L. Burnett, the judge advocate of the Western Department—these three being not only counsel for the government but, under the rules of war, members of the commission. In the centre was the witness-stand facing the judges and behind it were a table for the prisoners' counsel and another for the official reporters. There was no space for spectators, the rule being, "No admittance except on business." Along the western side was a platform, one foot in height and four in width, having a railing in front and divided near the south corner by a door opening into the corridor leading to the cells. Under the command of General John F. Hartranft, the special provost-marshall of the commission, were a brigade of volunteers and a detachment of the veteran reserve corps, detailed to stand guard outside and inside the prison,

protect the members of the court, prevent the escape of the prisoners and repel any hostile attack.

At the appointed hour the door in the western wall was thrown open and a woe-begone procession wound its painful way into the court room. Arnold, Mudd, Spangler, O'Laughlin, Atzerodt, Payne, Herold—each attended by an armed soldier—enter in the order named and, turning to their left, mount and march along the platform, taking their seats with the soldiers sandwiched among them. On their wrists were heavy bracelets of iron joined by a bar of the same metal ten inches long (except Mudd, whose handcuffs were joined by a chain); on their ankles, shackles joined by chains short enough to hamper their walk. Payne and Atzerodt, in addition, have iron balls attached to their legs, which the guards carry on entering or leaving the room; the canvass bags they wear in the cells are removed, but this is the sole relief allowed during the long days of the trial. Last of all, emerges from the darkness of the corridor Mary E. Surratt, who, turning to her right, has the cut-off corner of the platform to herself. The brutality of loading down with fetters the seven male prisoners, guarded as they were, while in the presence of their judges, passed with indifference if not with positive approval—so cruel was the humor of the time; but the presence of a helpless woman in that iron-bound row before a court composed of nine officers of the army with swords by their sides, sent a shock through the civilized world. The newspapers in their accounts of the session stated that she, too, was ironed—a report never publicly denied

until the lapse of eight years had generated a universal horror at the mere possibility of the outrage.\*

This gruesome ceremony being over, the Charge and Specification were read to the eight defendants. By the Charge they were jointly and severally accused of "traitorously" conspiring, "together with John H. Surratt, John Wilkes Booth, Jefferson Davis" and the Confederate agents named in the proclamation of the second instant (to whom were now added "George Harper, George Young and others unknown"), "to kill and murder the late President and Commander-in-Chief of the Army and Navy, the Vice-President, the Secretary of State and the Lieutenant-General; and of having, in furtherance thereof, "together with John Wilkes Booth and John H. Surratt," murdered the late President, assaulted with intent to kill the Secretary of State and lain in wait to murder the Vice President and Lieutenant General. The Specification, as its title imports, was designed to distinguish the particular parts the accused respectively had taken in the execution of the conspiracy—a task which the pleader had but little difficulty in performing in the cases of Spangler, Herold, Payne, Atzerodt and O'Laughlin who were in evidence on the night of the tragedy; but, in the cases of Arnold, Mudd and Mrs. Surratt, inasmuch as they were absent from the scene, he was compelled to employ such vague and general allegations as "harboring, aiding and assisting" the more active conspirators, and for a period of time "from, on or before the sixth of March up to the

\* Note II of this chapter in Appendix.

fifteenth of April";—by this means, moreover, rendering evidence of complicity in the plot to capture competent on the question of complicity in the assassination. After the prisoners had pleaded not guilty, the commission adopted rules of procedure, among other matters providing that the sessions should be secret,—no one to be admitted except by permit of the president of the tribunal except the attendants and counsel, and, also, that only such portions of the testimony as the judge advocate allowed should be made public; and then adjourned to enable the accused to employ counsel.

On Friday the testimony began, the major portion at first directed to proving the complicity of Jefferson Davis and his agents in Canada—a class of testimony submitted every now and then during the trial and withheld from the public until the trial was virtually concluded; given by spies in the pay of the Bureau and having but the remotest bearing on the guilt or innocence of the several prisoners at the bar; the witnesses being allowed to tell their stories in their own way without objection and without cross-examination. On Saturday occurred an incident which cast a flood of light on the judicial temper of certain members of the commission. Among the counsel for the prisoners was Thomas Ewing, Jr., an officer of equal rank in the army with members of the court, enjoying an established reputation for gallantry and skill in the war, and a brother-in-law of General Sherman. His appearance on behalf of Spangler and Doctor Mudd, however much it may have surprised his fellow-

soldiers on the bench, could not be made the subject of public animadversion; but when Reverdy Johnson took his seat among the counsel of Mrs. Surratt, it was considered high time to assert the sensitive loyalty of the tribunal. For Johnson, though for a long time past a distinguished statesman in the service of the country and at present a United States senator from Maryland, sided with the opposition, and for that reason in the view of the court was tainted with the disloyalty prevalent in his state. Accordingly, when, in reply to an inquiry of the judge advocate, he declared his intention to act as counsel for Mrs. Surratt if the court would permit him to leave at any time to attend to his duties in the Senate, General Hunter read aloud a note sent him by one of his colleagues objecting to the admission of the senator "on the ground that he does not recognize the moral obligation of an oath that is designed as a test of loyalty"; in support of the objection citing Johnson's letter to the people of his state in the fall of 1864 advising them to take the oath the convention had prescribed as a condition precedent of the right to vote on the question of the ratification of the constitution it had framed. In response to this attack, Johnson asked what member of the court made the objection; and the presiding officer thought proper to reply: "It is General Harris; and if he had not made it, I should have made it myself." The indignant lawyer called for the letter, and it appearing that the objector relied solely on his having read it six months or more ago, protested that his opinion "could not be tortured by

any reasonable man into any such conclusion.” “There is no member of this court, including the President and the member who objects, who recognizes the obligations of an oath more absolutely than I do; and there is nothing in my life, from its commencement to the present time, which would induce me for a moment to avoid a comparison in all moral respects between myself and any member of this court. . . . I have lived too long, gone through too many trials, rendered the country such services as my abilities enabled me and the confidence of the people in whose midst I am has given me the opportunity, to tolerate for a moment—come from whom it may—such an aspersion upon my moral character. I am glad it is made now, when I have arrived at that period of life when it would be unfit to notice it in any other way.” He continued: “All that the opinion said, or was intended to say, was, that to take the oath voluntarily was not a craven submission to usurped authority, but was necessary in order to enable the citizen to protect his rights under the then constitution; and that there was no moral harm in taking an oath which the convention had no authority to impose.” And he concluded: “The court, therefore, or the honorable member . . . who thinks proper . . . to make this objection and the President who said he should have thought it his duty to make the objection if no member of the court had done it, are to understand that I am not pleading here for anything personal to myself. I stand too firmly settled in my own conviction of honor and in my own sense of duty, public and private,

to be alarmed at all at any individual opinion that may be expressed; but I ask the court to decide. . . . If it shall be such a decision as the President seems himself to be disposed to make, I can take care of myself in the future." General Harris here interposed with the remark that he could not see that the counsel's explanation "removed the difficulty." "I understand him to say that the doctrine he taught the people . . . was that because the convention had framed an oath and required the taking of that oath as a qualification of the right of suffrage, which oath was unconstitutional . . . therefore it had no binding force and that the people might take it and then go and vote without any regard to the subject-matter of the oath." Johnson repudiated any such interpretation of his teaching, pointing out the difference between his saying "there was no harm in taking the oath" and his "telling the people of Maryland there would be no harm in breaking it after it was taken." And then he opened upon a new line: "But, it is something new to me that the objection, if it was well founded in fact, is well founded in law. . . . Who gives to the court the jurisdiction to decide upon the moral character of the counsel who may appear before them? Who makes them the arbiters of the public morality and professional morality? What authority have they . . . to rule me out, or to rule any counsel out, upon the ground, above all, that he does not recognize the validity of an oath, even if they believe it?" General Harris calling attention to the rule requiring counsel to take the oath in court or produce a certifi-

cate of having taken it elsewhere, Johnson subjoined: "I have taken the oath in the Senate of the United States—the very oath you are administering; I have taken it in the Circuit Court of the United States; I have taken it in the Supreme Court of the United States; . . . and it would be a little singular if one who has a right to appear before the supreme judicial tribunal of the land, and who has the right to appear before one of the legislative departments . . . whose law creates armies and creates judges and court-martials, should not have the right to appear before a court-martial."

As the court was about being cleared for deliberation the presiding officer burst out: "Mr. Johnson has made an intimation in regard to holding members of this court responsible for their action";—and, that gentleman disclaiming any such intent, he ordered the court cleared with the remark: "I was going to say that I hoped the day had passed when freeman from the North were to be bullied and insulted by the humbug chivalry; and that, for my part, I hold myself personally responsible for everything I do here."

On the resumption of the session, General Harris withdrew his objection, avowing his gladness "to give the gentleman the benefit of his disclaimer," but insisting that it was "a tacit admission that there was some ground for" his own "view"; and General Wallace, who probably was ashamed of the whole affair, suggesting that every member of the commission must know that the senator had taken the oath, that formality was dispensed with and the counsel

suffered to appear without further opposition. The mischief, however, was done. The woman on whose behalf the senator gratuitously tendered his services, she being, as he said, "a Maryland lady," was robbed of the help she might have gained from the skill of so celebrated an advocate. He himself apprehending that his appearance might do her more harm than good gradually withdrew from attendance on the commission, sending in his argument on the question of jurisdiction to be read by one of his juniors. And his fears were not without foundation. Little as he was able to do for his client on the trial proper, his demonstration that the tribunal before which she was draggled had no right to try her at all subjected him to be held up in his absence to "public condemnation" by Judge Bingham for "denouncing the murdered President and his successor"; making "a political harangue, a partisan speech against his government, thereby swelling the cry of the armed legions of sedition and rebellion that but yesterday shook the heavens"—and doing "without pay" what his "colleague"—the proprietor of the *New York Daily News*—for \$25,000 was doing "with greater plainness of speech."\*

Another incident that took place after the testimony for the defence began was, if possible, a grosser outrage. Edward Johnson, late a major-general in the Confederate service and now a prisoner of war, was brought from Fort Warren in Boston harbor to testify in Mrs. Surratt's behalf; and, when he was about to

\* See Note III to chapter in Appendix.

take the oath, General Howe conceived it to be his duty as a judge to interpose as follows: "It is well known to me . . . that Edward Johnson was educated at the national military academy at the government's expense and that since that time he held a commission in the army of the United States. . . . In 1861 it became my duty as an officer to fire upon a rebel party, of which this man was a member, and that party fired upon, struck down, and killed loyal men that were in the service of the government. . . . I understand he is brought here now as a witness to testify before the court, and he comes here as a witness with the blood of his loyal countrymen shed by him or by his assistance, in violation of his solemn oath as a man and his faith as an officer. I submit to this court that he stands in the eye of the law as an incompetent witness, because he is notoriously infamous. To offer as a witness a man who stands with this character . . . is but an insult to the court and an outrage upon the administration of justice. I move that this man, Edward Johnson, be ejected from the court as an incompetent witness on account of his notorious infamy . . ." General Ekin, rising to second the motion and overlooking the fact that the witness had no alternative but to come, characterized his appearance "with such a character" as "the height of impertinence." One of the counsel of the prisoner reminded the court that persons with just such a "character" had been sworn on behalf of the prosecution, including the very witness General Johnson was called to impeach; and Judge Holt was forced to instruct the commission that

the laws required a record of conviction to exclude the witness though the tribunal, on the grounds stated, might discredit his testimony. Whereupon, General Wallace expressing the hope that "for the sake of public justice" the motion be withdrawn, General Howe succumbed, the soldier who returned his fire was sworn and the commission, to get rid of his testimony, adopted the alternative method pointed out by the judge advocate.

Indeed, throughout the entire trial the commission acted upon the theory that false swearing was to be expected from any witness for the defence who had participated in the rebellion either in word or deed. Nay, the court went still further under the dictation of the judge advocates. At one stage of the proceedings proof was offered that Arnold had served in the Confederate army, and Ewing objected to the testimony as tending to prove his client guilty of a crime for which he was not on trial. Holt, in support of his offer, said: "How kindred to each other are the crimes of treason against the nation and the assassination of its chief magistrate." "When we show the accused bearing arms in the field against the government, we show with him the presence of an *animus* toward the government which relieves this accusation of much, if not all, of its improbability." Bingham came to the assistance of his associate with the rule that, the conspiracy as charged being "in aid of the rebellion," the evidence offered was competent on the question of intent; demanding: "When he entered it, he entered into it to aid it, did he not?"—and, Ewing rejoining:

“He did not enter into that to assassinate the President,” Bingham, soaring to the height of his argument, launched forth the following as a proposition of law: “Yes, he entered into it to assassinate the President; and everybody else that entered into the rebellion entered into it to assassinate everybody that represented the government, that either followed the standard into the field or represented its standard in the counsels. That is exactly why it is germane”; and the commission so ruled.\* In fact, on all questions of law the court followed the opinion of the judge advocates with the same docility as a jury follows the judge in the civil courts; and this habitual acquiescence could not but lend a preponderating force to the argument of these officers on questions of fact. The hypothesis of a widespread conspiracy to take off the heads of the government was accepted without question and became a convenient device to make every item of evidence bearing upon the guilt of any individual named in the charge, whether on trial or not, tell as evidence against all the prisoners at the bar. Union soldiers from Libby, Belle Isle and Andersonville staggered to the witness stand to testify concerning their ill-treatment by the Confederates with all its ghastly details; letters offering to rid the world of the South’s “deadliest enemies” picked up in the abandoned Confederate capital; the burning of Union transports and bridges; the raids from Canada over the border; the plot to introduce infected clothing into northern cities; the confession of Kennedy, hung for an attempt to burn

\* Poore, II, 139-147.

New York:—all came in, first as evidence against Jefferson Davis and his subordinates on the ground that the perpetrators of such atrocities were just the men to participate in assassination, and, secondly, as evidence against the parties on trial on the ground that Jefferson Davis was their co-conspirator. Walter S. Cox, the counsel of O'Laughlin and Arnold, in his final argument spoke of the charge as follows: “It described one offence of some kind, but, however specific in form, it seems to have been intended, like a purser's shirt, to fit every conceivable form of crime which the wickedness of man can devise. The crime is laid in Washington, yet we have wandered far away. . . . We have been carried to the purlieus of Toronto and Montreal, skirted the border of New York and Vermont, passed down the St. Lawrence and out to sea; visited the fever hospitals of the British Islands, returned to the prison pen of Andersonville; penetrated the secret counsels of Richmond; passed thence to the hospitals of the West, ascended the Mississippi and, at length, terminated this eccentric career in the woods of New York”; and, with a fine irony which, now that it is seen to have been deserved, reddens the cheek with shame, subjoined: “I cannot for a moment suppose that the object was to inflame prejudice against the accused because of the remote connection with the authors of all these evils and, for want of higher victims, to make them the scapegoats for all the atrocities imputed to the rebellion; to immolate them to hush the clamors of the public for a victim . . . ;—for such a proceeding would disgrace

this government in the eyes of all Christendom as much as assassination would disgrace the spurious government which has just vanished into thin air.”\*

The direct testimony for the prosecution closed on the twenty-third day of May; a little over nine working days having been consumed, and one hundred and thirty-one witnesses examined, of whom the testimony of seventeen was directed against Payne particularly, of ten against Atzerodt, of nineteen against Mudd, of eleven against O’Laughlin, of eight against Arnold, of four against Spangler, and of seven against Mrs. Surratt, making in all sixty-eight. Of the remaining sixty-three, the testimony was directed to incidents immediately connected with the assassination and to the complicity of the Confederate officials. The testimony for the defence closed formally on the tenth of June, having occupied parts of the intervening working days. About one hundred and twenty-eight witnesses were sworn, besides the witnesses to the general conspiracy interspersed by the judge advocate nearly every session. Four more days were taken up in rebuttal and then (the sixteenth) the argument of counsel began.

On behalf of Herold, Payne and Atzerodt no defence was possible. Associated as Herold was with Booth in his flight and capture, the plea that he lent no aid to his principal in the article of crime could not avail him. For Payne, the same plea was interposed that he himself uttered when dealing his death blows; but, though it was shown that his intellect was weak and sluggish,

\* Pitman, 333-4. See Note IV to chapter in Appendix.

and he was subject to fits of unbridled rage, no doubt was thrown on his sanity within the definition of the law. Atzerodt, doubtless, did nothing in pursuance of the part thrust upon him at the last moment; but his guilty knowledge of the bloody work going on left no room for mercy. On the other hand, for the four other male prisoners, defences were put up strong enough to break up the unanimity of the commission and even to shake the self-confidence of the judge advocates. In Arnold's case, all the evidence against him pointed to his participation in the abandoned plot; there was not a scintilla that he knew anything of a design to assassinate—that idea first entering Booth's head after this prisoner had sought and found employment at Fort Monroe. O'Laughlin, his yoke-fellow in the plot to capture, was present, as it happened in the capital on Thursday and Friday nights of the fatal week; but his whereabouts were so clearly and minutely traced by witness after witness of unexceptionable loyalty that even the commission declined to follow Bingham in identifying him with the stranger who was to dispose of General Grant. Spangler and Mudd could not boast of so clean a bill of health. Spangler, according to a preponderance of the evidence, had no hand in tampering with the doors of the President's box or in providing the means to bar an entrance from the outside; but there was testimony to the effect that he tried to check the instant pursuit and hush up the identification of the assassin. Similarly, in the case of Doctor Mudd, though the insidious attempt of Wiechmann to connect him with the plot to

capture came to naught, the testimony of the detectives, colored though it was by the hope of reward, left two questions doubtful; whether the doctor recognized Booth when he set his leg, and whether, after he learned of the assassination, he suppressed the fact of the harboring of the fugitives.

So much for the seven men; now for the one woman. It will not be denied that her case was one which, for the sake of common decency, if from no higher consideration, it behooved the prosecution to so handle as to avoid even the slightest semblance of prejudgment. Yet it was upon her case that the joint trial bore with the most deadly effect. To try a woman, a civilian, a householder of Washington city, by a tribunal of soldiers, was a thing hitherto unheard of; to hook her fast to the same chain with Arnold and O'Laughlin whom she had never seen, with Herold and Atzerodt and Payne whose guilt was taken as a matter of course, and, in addition, to make her a partner with Jefferson Davis in the atrocities alleged to have been perpetrated in his name; this was simply disrobing her of her sex preparatory to handing her over to the executioner. The only evidence against her of any weight—without which the Bureau would not have ventured to arraign her in such company—bore no relation whatever to the plot to capture and, if it showed anything in regard to the matter, showed she knew nothing of the project in which her son was so active a participant. The evidence on which the Bureau mainly relied consisted of incidents of the week of the assassination and tended to prove her an accomplice in that foul deed. The

non-recognition of Payne, on the night of her arrest—the only other circumstance on which great stress was laid—was, as we have already intimated, divested of most, if not all, its criminating significance by the testimony of one of the two leading officers who were present on the occasion. The incidents which in fact constituted the gist of the evidence against the woman took place on two drives to Surrattsville—one on Tuesday the eleventh and the other on Friday the fourteenth of April—when she was escorted by her favorite among the boarders at her house. This man and her tenant at the tavern were the two witnesses, both implicated in the conspiracy and both testifying in peril of their lives. Lloyd, after his arrest, and Wiechmann, after his interview with Stanton and his imprisonment, alike sought safety in shifting the load weighing themselves to the earth upon the shoulders of the mother of the co-conspirator still at large. Lloyd, sodden with drink and unmanned by terror, crying aloud: "That vile woman! She has ruined me," revealed clearly his purpose; but Wiechmann, the likelihood of a pardon having quieted his nerves, proceeded with feline caution. When he heard of the assassination from the police searching the house for Booth and Surratt, he exclaimed: "Great God! I see it all now"; and he saw it all to the end. Apparently with the utmost frankness, he put himself in the very focus of the conspiracy, associating convivially with the conspirators, present at their half-veiled consultations, surprising them at drill with their weapons; but, as he would have you bear in mind,

merely as a hoodwinked looker-on, an innocent spy upon his comrades that they might not escape their fitting doom. At moments in his fluent narrative when his own implication seems inevitable, he suddenly shies away, disappointing the hearer of the expected catastrophe, leaving his evidence inconclusive while pointing out the way to corroboration. For example: both trips to Surrattsville were on business that imperatively called for Mrs. Surratt's attention, and was in fact transacted with the assistance of the witness; but in his description of each journey he interweaves incidents which, while passing harmless by himself, were calculated to cast suspicion on his companion. On Tuesday, on the way down, they met Lloyd—and Lloyd held a conversation with Mrs. Surratt in so low a tone that Wiechmann sitting beside her failed to overhear it. Again, on Friday, at about two o'clock in the afternoon, the carriage to take them being at the door, Booth came in, remained a few minutes, and left a package (subsequently shown to have contained the field-glass Booth called for in his flight) which was deposited on the bottom of the buggy and carried to Surrattsville; in the evening when about to return home without seeing Lloyd, who was absent attending court at the county seat, they (having given the package to his sister-in-law) discovered that the axle of their vehicle was broken; and the tavern keeper, arriving during the interval of delay occasioned by the accident, held a conversation with Mrs. Surratt alone in the back yard as he alighted from his wagon. Thus far Wiechmann; and on this trial he

went no farther, leaving two significant gaps for his partner in turning state's evidence to fill. Lloyd, on the other hand, who, having served for a time on the police of the capital, fully realized the plight he was in, first confessed to the officer who took him in custody and who subsequently boasted he extorted the confession "through strategy,"\* that when Mrs. Surratt met him in the back yard she handed him the field-glass and told him "to have those shooting irons ready that night; parties would call for them"; but he made no mention of any meeting on Tuesday. It was not until he joined Wiechmann in Carroll prison that he was reminded of the conversation which Wiechmann was too loyal to listen to. His advanced state of intoxication at the moment he met Mrs. Surratt on Friday discredited his report of the conversation on that day, and, therefore, an appeal was made from the witness when drunk to the witness when sober. On the Surratt Trial, Lloyd testified that while he was in Carroll prison, a military officer (who resembled General Foster of the commission), irritated at the lack of "fullness" in his statement, told him he was "guilty as an accessory to a crime, the punishment of which was death";† and it was probably under some such pressure as this that he yielded up the contents of the conversation of Tuesday: "She told me to get the shooting irons ready; they would be wanted soon." The meeting taking place on the highway, and the only outside person having turned a deaf ear to the words

\* See Note V to chapter in Appendix.

† S. T., 290.

used, the unfortunate woman, her own mouth being sealed, was completely at the mercy of the craven informer, and could only point to the improbability of her being intrusted with a message so wholly uncalled for. Friday's conversation, as given by Lloyd, discredited though it was by his condition, at least constituted a link in a chain of events having a logical antecedent and a logical consequence. Tuesday's stood isolated—brought about, so far as appears, by no incident before and leading to none after—a common badge of manufactured evidence.\*

As a matter of fact, the managers of the Bureau would never have dragged this poor woman before the commission instead of these two main witnesses against her, had it not been for the expectation that her arraignment would serve as a decoy to a much more prominent conspirator. It was not the mother they were after, it was the son. According to the hypothesis with which they were infatuated, John H. Surratt was, next to Booth, the moving spirit of the assassination conspiracy. In spite of every indication to the contrary, they persisted in believing that he was present on the scene, actively aiding and abetting the actual perpetrator of the crime. Among his numerous friends, acquaintances, the tradesmen with whom he dealt in the capital and the witnesses whose testimony implicated him in the plot to capture, not one, not even Wiechmann, had set eyes on him since his departure for Canada in the early morning of the fourth of

\* Lincoln's speech, which in all probability set the assassin in motion, was not made until Tuesday night. See Chap. II, p. 40.

April. Detectives found trace of him in Montreal on the twelfth and again on the eighteenth, but not one could they find during the interval. At the moment when the blood of Lincoln was being shed inside the theatre, when Payne was wreaking his fury on the Seward household, when such minor accomplices as Herold and Atzerodt and Spangler were to the fore, and even the as yet unidentified stranger who called the hour\* was playing his part, the twin leader with Booth failed to put in an appearance,—left his rôle, if any were assigned him, vacant. One witness and but one, they did unearth—a merchant tailor, acquainted with Surratt in his boyhood but never having exchanged a word with him in his life; who testified that at half-past two in the afternoon of the fourteenth he recognized the young man walking up the avenue, his attention being specially attracted by the neatness of his attire and the bran-new spurs he wore.†

Upon this frail foundation the Bureau erected its case against the son of the woman the court was to condemn in his stead. As outlined by the special judge advocate, it was as follows: When Surratt went to Richmond on the twenty-fifth of March, his mission was “to get funds to carry out the conspiracy; he brought back with him gold, the price of blood”; immediately he went to Canada “with despatches from Jefferson Davis to Jacob Thompson approving the conspiracy”; and while he was there, “Thompson drew from the bank \$180,000 of the rebel funds on deposit.”

\* Dye's testimony on both trials.

† Poore, I, 170; Pitman, 138.

“This being done, Surratt finding it safer to go to Canada for the great bulk of the funds to be distributed among these hired assassins than to attempt to carry it through our lines direct to Richmond, immediately returned to Washington and was present in this city . . . booted and spurred, ready for flight whenever the fatal blow was struck. If he was not a conspirator, how comes it that from that hour to this, no man had seen him in the capital, nor has he been reported anywhere outside of Canada—having arrived in Montreal on the eighteenth, four days after the murder? Nothing but his conscious coward guilt could possibly induce him to absent himself from his mother, as he does upon this trial.” According to the counsel, his were “the retreating footsteps” heard by the witness Wiechmann, “at about half-past eight in the evening” of the fatal Friday, when the son paid “the secret and last visit to his mother who had instigated and encouraged him to strike this traitorous and murderous blow against his country.”\*

On Friday, June the sixteenth, the argument of Reverdy Johnson, adverse to the jurisdiction of the tribunal, was read by his associate, Mr. Clampitt; and, on the succeeding Friday, General Ewing addressed the commission on the same subject, the consideration of which is postponed until another chapter. The sessions intervening and the two after the twenty-third were taken up by the summing up of the testimony by the counsel for the accused. The plea for Herold was submitted “at the earnest request of his

\* See Note VI to chapter in Appendix.

widowed mother and estimable sisters"; at the end of the plea for Atzerodt was appended a statement of the prisoner himself confessing his participation in the plot to kidnap but disclaiming participation in the plot to kill; the plea for Payne was a curious dissertation on the overpowering influence of environment in brutalizing this offspring of the social system of the South, thrown in his early youth into the horrors of civil war. The able address of Walter S. Cox may be said to have demonstrated the innocence of Arnold and O'Laughlin; and nothing less convincing than the tactful and closely reasoned review of the evidence by Ewing could have snatched Mudd and Spangler from the jaws of death.

On Tuesday, the twenty-seventh, the case was re-opened to allow Sanford Conover to be heard. This parent and tutor of the brood of false witnesses sworn to establish the complicity of the Confederates, after giving his testimony in secret session, had gone back to his hunting grounds after further game, to be confounded by the report of the evidence published in a New York journal, in the first part of June. Immediately he came forward with an affidavit sworn to under the name by which he was known in Canada, denouncing the witness as an imposter, and with an offer of five hundred dollars for the arrest of "the infamous and perjured scoundrel who secretly personated me (him) under the name of Sanford Conover and deposed to a tissue of falsehoods before the military commission at Washington." Having thus put himself right with the men whom he had implicated,

he was allowed to repair to Washington; and the Bureau could do no less than to afford its prize witness an opportunity to explain. Accordingly, the flow of forensic eloquence was interrupted while this detected spy, with unabashed forehead, told how his affidavit and his offer of reward for his own arrest were extorted from him at the muzzle of a rebel's pistol.

Conover's self-vindication being complete, the field was clear for Bingham to enter upon the discharge of the function for which he was specially retained. Under military procedure, the final argument of a judge advocate corresponds to the charge of a judge in jury trials rather than to the summing up of counsel; but the address of this member of the commission was decidedly non-judicial. The crime committed was "not simply the murder of a human being," but "a combination of atrocities" committed "upon the instigation of Jefferson Davis" and his agents in Canada. In one respect he was strictly impartial; every one of the conspirators—those on trial and those absent—was guilty beyond the slightest shadow of doubt. "Who doubts," he asks, "that Kennedy was commissioned by the accredited agents of Jefferson Davis to burn the city of New York?" that "Davis by his agents . . . adopted a system of starvation of our soldiers, . . . paid money for the importing of pestilence into our camp and cities?" "It only remains to be seen," he continues, whether this "procurer of arson and of the indiscriminate murder of the innocent and unoffending was capable . . . of direct assassination." And, in this connection, he cites the

testimony of Conover, whom he holds up before the commission as a model witness whose credibility is beyond question. Not only Payne, Herold and Atzerodt, but Arnold, O'Laughlin, Mudd, Spangler and Mary E. Surratt are brought within the compass of the counsel's sweeping condemnation. Arnold, so far from withdrawing from the plot, went to Fort Monroe to wait for the arrival of funds from Richmond or for Booth's signal. "Who doubts," he asks, "that Booth, having ascertained in the course of the day that General Grant would not be present at the theatre, O'Laughlin who was to murder General Grant, instead of entering the box with Booth, was to lie in wait and watch to support him? His denial that he knew nothing of the affair is as false and inexcusable as Peter's denial of our Lord." Mudd, according to the counsel, was present in Washington "on the day preceding the inauguration, when Booth was to strike the traitorous blow, . . . to abet, to encourage, to nerve his co-conspirator for the commission of this great crime." "Spangler's complicity" is clear: he provided the bar, cut the mortise in the wall, loosened the locks of the boxes, and "undertook and promised to do" what Chester refused. "It is almost imposing upon the patience of the court," the counsel remarks, "to consume time in demonstrating the fact, which none conversant with the testimony in this case can for a moment doubt, that John H. Surratt and Mary E. Surratt were as surely in the conspiracy to murder the President as was John Wilkes Booth himself." He scouts the idea that there ever was a "purpose to

abduct the President and take him South," holding it up to derision as "another silly device like that of the 'oil business'"; scorning "to waste time in combating such an absurdity"; disposing of Wiechmann's account of the actual attempt that failed, as follows: "When these parties left the house that day, it was with the full purpose of completing some act essential to the final execution of the work of assassination. . . . They returned, foiled—for what cause is unknown—dejected, angry and covered with confusion."\*

This impassioned appeal for the condemnation of every one of the prisoners at the bar closed the case.

\* See Note VII to this chapter in Appendix.

## CHAPTER V

### THE FINDINGS, SENTENCES AND EXECUTION

WHEN the court reassembled on Thursday, the twenty-ninth of June, the prisoners' dock and the table of their counsel were empty; even the official reporters were excluded; the doors were locked and the guard stationed outside. But the counsel for the government, who for two months had bent all their energies to convince the tribunal of the guilt of the defendants, including the special judge advocate who had just exhausted his celebrated oratorical powers in winding up the patriotic prejudices of its members to the highest pitch, were present and permitted to take a leading part in making up the judgment; a judgment which, under the rules of military procedure, comprised not only the finding of the verdict, but also the meting out of the punishment. Of what took place in that third-story room we have only the formal record now on file in the office of the judge advocate general; a document meagre in the extreme, but from which we may gather, with the aid of plausible conjecture, the line of discussion and the partial revolt of some members of the commission from the guidance of the judge advocates that necessitated a prolongation of the session into the second day. The first day, from the hour of ten in the morning until six in the evening, was consumed in deliberating "upon the

evidence in the case of each of the accused" in the order named in the Charge, from Herold to Mudd; in finding all, except Spangler, guilty of the conspiracy as charged; and in affixing the sentences, except in the case of Mudd, the consideration of whose case was interrupted by the adjournment. It is probable, however, that on the first day a mere memorandum of the decisions of the court was noted down, the formal record not being drawn up until the labors of the commission were concluded. No doubt seems to have been entertained that the assassination was the product of a widespread conspiracy premeditated for several months, since the commission found Jefferson Davis and his Canadian agents as well as John H. Surratt to have been co-conspirators of the defendants. Herold, Atzerodt and Payne, it is clear, were found guilty of both Charge and Specification without debate, and sentenced to be hanged by the neck until dead, *nem. con.* But the case of O'Laughlin, coming next, occasioned the first symptom of a disinclination on the part of some members of the tribunal to follow the sweeping condemnation of Judge Bingham. They were willing to find this prisoner guilty of the Charge in general, but a majority refused to find him guilty of that part of the Specification which charged him with lying in wait for General Grant—the only part in the conspiracy he was accused of having undertaken. Moreover, in affixing the sentence the two-thirds vote required for the death penalty could not be secured and O'Laughlin who, under the evidence, ought to have been acquitted, got off with imprisonment for life.

“The testimony of Spangler’s complicity” seemed by no means so “conclusive” to the commission as to Judge Bingham, a majority being in favor of limiting his guilt to having been an accessory after the fact; and, in his case, accordingly, death was out of the question, and the majority astonished the special judge advocate by imposing so slight a sentence as six years’ imprisonment. In the three succeeding cases—Arnold’s, Mrs. Surratt’s and Mudd’s—the commission found the prisoners guilty of both Charge and Specification, as it had done in the cases of Herold, Atzerodt and Payne; and yet the majority persisted in the disinclination to take any more lives. The holocaust was ample enough, they seem to have thought. In Arnold’s case, the six voices required could not be persuaded to speak the fatal word, and life imprisonment was decreed in its stead. The hot midsummer day was drawing to a close when the doom of the single female culprit came up for consideration. Through the long days of the trial she sat in her isolated corner, if unfettered, only so in homage to her sex and because of her widowed motherhood;—an object of pity to both gods and men. Guilty, it is true, the court had found her, but of the same grade of crime as Arnold’s, O’Laughlin’s and Mudd’s. No reason whatever is apparent why the majority, especially in the case of a woman, should abandon the course of clemency they had entered upon and revert to the severity they had inflicted without question on such outlaws as Herold, Atzerodt and Payne. Again, therefore, the six voices were wanting. Four voted for the extreme penalty,

as in all likelihood they had voted in the cases of Arnold and O'Laughlin; but five continued to lean to the side of mercy and undoubtedly would have gone on and done in the case of the woman what they had done in the cases of the two men—that is, imposed the milder punishment—had it not been for the interposition of the judge advocates. These three officers, as well as the Secretary of War whose obedient servants they were, if we are to judge from the address of the one who was the mouthpiece of the prosecution, must have been opposed to the exercise of clemency towards any one of the prisoners; in which respect, in all probability, they were sustained by a minority of the commission. And, in the case of Mrs. Surratt, their opposition was greatly intensified by the escape of her son. They had failed to move the majority in the contested cases of the men; but in the case of the woman they were reinforced by an additional consideration which they brought into play with telling effect. Clemency to her, they argued, would be of evil example; the women of the South were worse rebels than the men; above all, to save the life of the mother was to allow the son to go unwhipped of justice. We can almost hear the voices of Holt and Bingham as they exhorted in these terms the too soft-hearted members of the court; nevertheless, as we have a right to infer, the majority stood firm; so much so that it became necessary to bring forward a final suggestion. The President was in full command of the situation; his approval must be given before the sentence could be executed; let him, therefore, take the responsibility;

sex and age will appeal to him no less powerfully than to your own chivalrous hearts, and that, too, at the proper moment, for he and he alone can hold the fate of the mother *in terrorem* over the fugitive son.\* Under this heavy pressure, two at least of the five come over; and Mary E. Surratt is sentenced "*to be hanged by the neck until she is dead . . . ; two thirds of the commission concurring therein.*" It is now six o'clock. The commission adjourns until to-morrow; and the judge advocates hurry to the War Office to report to their chief. The next morning the court resumes its secret deliberations; and the majority, still bent on clemency, sentence Doctor Mudd to imprisonment for life. This act completes the labors of the commission. The official record is then made up from the memorandum; signed by "D. Hunter" and countersigned by "J. Holt." There must have taken place among the members, however, a discussion, the outcome of which does not appear in the record itself. It is plain that the officers favoring clemency toward Mrs. Surratt were not content to leave the question of commutation to the naked discretion of the executive, but were determined that their own predisposition should be embodied in a petition to be brought to the attention of the President at the same time with the recorded sentence. Such a demand, under the circumstances, could not very well be gainsaid, and, therefore, Bingham, much against the grain, redacts upon a loose piece of paper the following attenuated prayer:

\* See Note I to this chapter in Appendix.

"The undersigned, members of the Military Commission detailed to try Mary E. Surratt and others for the Conspiracy and the murder of Abraham Lincoln, late President of the United States &c., respectfully pray the President, in consideration of the sex and age of the said Mary E. Surratt, if he can, upon all the facts in the case, find it consistent with his sense of duty to the country, to commute the sentence of death, which the Court have been constrained to pronounce, to imprisonment in the penitentiary for life.

Respectfully submitted"

General Ekin makes a fair copy on legal-cap paper, to which the five affix their names: D. Hunter, August V. Kautz, R. S. Foster, James A. Ekin, Chas. H. Tompkins;—Ekin retaining the draft as a memento of the occasion. The record and petition are placed in the hands of Colonel Burnett; an adjournment is taken without day; the members disperse and the work of the commission is done.

The record itself is a document of five half-sheets of legal-cap paper, four of them written over on both sides from top to bottom and from bottom to top alternately; the account of the first day's proceedings ending on the back page of the fourth, leaving a portion of the page blank. The account of the second day's proceedings occupies but a small space of the first page of the last half-sheet, leaving blank a full half of that page and the whole of the back thereof. The document is complete in itself, its leaves being fastened together by a narrow yellow silk ribbon pushed through a hole in the top in the fashion of law papers which are read by turning them over from the

bottom.\* According to Colonel Burnett's own statement, when he reached his "office in the War Department on the 30th—possibly on the morning of the 1st of July" he "attached the petition or recommendation of mercy to the findings and sentences and at the end of them," and "carried . . . and delivered them to the judge advocate general in person or to the clerk in charge of the court-martial records."†

There they remained through the first four days of July, the President being so ill as to "have no opportunity of conferring with any members of his cabinet."‡ During this interval, Washington, Maryland, and to some extent the whole country waited in painful suspense to hear the fate of Mrs. Surratt—that of her companions in misery being almost taken for granted. In fact, an impression prevailed generally that the court would not, and could not if it would, belie the final cause of its organization; but a ray of hope kept flickering that a majority of the distinguished officers composing the tribunal would stop short of hanging a woman of the character and standing of Mrs. Surratt upon the same scaffold with a desperado like Payne. At length, on Wednesday, the day after the Fourth, Preston King, late a senator in Congress from New York and now a favored guest at the White House, sauntered into the judge advocate's office and incidentally let fall the remark that the President was

\*See copy of part of record in Appendix, Note II of this chapter.

† See paper read by Col. Burnett before Loyal Legion, N. Y., April 3, 1889: printed in Appendix to Harris' *Hist. of Assassination*.

‡ Holt's *Refutation* (1873), pamphlet.

able to leave his bed; and being informed that Holt was waiting to submit the record of the trial for executive approval, a messenger from the White House, later in the day, summoned that officer to an interview with his titular commander-in-chief. The President, not being expected to wade through the mass of testimony, depended for his knowledge of the merits of the cause almost exclusively on the Secretary of War and his immediate subordinates of the Bureau. Holt, therefore, did not burden himself with the stenographer's minutes of the examination—direct and cross, by question and answer—of three hundred witnesses; but, in lieu thereof, prepared what he styled a “formal brief review of the case”; and, with this document and the secret record, set out on his errand of doom. As he says, he found the President “alone,” very pale, as if just recovered from a severe illness”; and “without delay” he “proceeded to discharge the duty which brought me (him) into his presence.”\* No more was required from him but to read, or submit to the President for him to read, his “brief review” dated that day, addressed to that officer and signed by himself. This, after reciting the Charge and Specification, the findings and sentences (changed in their order, however, so as to bring Mrs. Surratt's next to the three condemned with her to death), concluded as follows:

“After a trial continuing for fifty-three days, in which between three or four hundred witnesses were examined for

\* *Refutation, ut sup.*

the prosecution and defence and in which the rights of the accused were watched and zealously guarded by seven able counsel of their own selection, the commission have arrived at the conclusions presented above.” (Bingham’s argument thereunto annexed is here referred to.) “The opinion is entertained that the proceedings were regular, and that the findings of the commission were fully justified by the evidence. It is thought that the highest considerations of public justice, as well as the future security of the lives of the officers of the government, demand that the sentences based on these findings should be carried into execution”;—\*

There was no mention or hint of the petition.

Further exhortation was uncalled for. “At the time,” to quote Holt himself, “Johnson needed no urging”; his ruling impulse was to get rid of a distasteful duty in the shortest possible time. The question of commuting the sentence of the one woman among the eight condemned must have arisen even had there been no suggestion emanating from the judges of the court; and the President was notoriously of the opinion that sex furnished no ground for his interference—a doctrine which his interlocutor saw no reason to combat.† The only question raised being thus settled, the day of execution is fixed for the succeeding Friday, and then the judge advocate proceeds to draw up the executive order in due form. Turning the sheets over until he reaches the last, on the upper part of the first page of which the record terminates, and beginning on the second line below the

\* See Report of Jud. Adv. Gen., Nov. 13, 1865, to Sec. of War.

† See Note III to this chapter in Appendix.

signature "D. Hunter," he writes out what was called the death warrant, approving the sentences and directing them to be carried into execution. The page is filled before his task is done, when, instead of turning the page up and continuing to write on the back from the bottom down—the method employed as to all the other sheets—he turns the entire record over and continues writing on the back page from its top, proper, down; a change, whether unintentional or not, likely to have the effect of throwing any leaf flying at the end of the record out of the sight of the signer of the paper.\* Completing his draft, the judge advocate pushes the roll over to the President who signs "Andrew Johnson" with a tremulous hand. The "confidential interview" is over, and Holt, gathering up the sheets, hurries over to the War Office, communicates the result of the consultation to Stanton,† and, passing down stairs to the room of the adjutant general, delivers to that officer so much of the record as enables him to promulgate the death sentences and the death warrant on the morning of the next day.

When the tidings spread through the capital that Mrs. Surratt was to die on the same scaffold with Herold, Atzerodt and Payne within twenty-four hours, her relatives and friends were struck dumb with dismay; something like consternation swept over the bulk of the inhabitants and sombre misgivings troubled the most loyal breasts. A rumor that five of the officers had joined in a recommendation of mercy in which the

\* See part of record in Appendix, Note II of this chapter.

† Burnett's paper in Note III of this chapter.

entire commission concurred aroused a forlorn hope that the President might even yet relent; and a stream of suppliants set in towards the White House—priests of the church to which the doomed woman belonged, and high-placed men and women of the world; but they were repelled by Preston King and James Lane (a senator in Congress from Kansas) who between them divided the task of keeping the seclusion of the executive inviolate. In the evening, the half-crazed daughter managed to reach Judge Holt at his residence and implored him to beg from the President three days more of life for her mother, which the judge promised to do.\* No pause, however, was made in the preparations for the fourfold execution of the morrow. The scaffold, with its long platform in which were two drops and its four ropes dangling from the cross-beam, was being constructed in the prison yard; and, at five in the morning, the four condemned prisoners were removed from the tier of cells on the upper floor which they had hitherto occupied, to separate cells on the first floor, so as to be in closer proximity to the instrument of death. As a last desperate resort, application was made for a writ of *habeas corpus*, which was granted by Judge Wylie of the Supreme Court of the District and made returnable at ten o'clock; on the service of which, General Hancock, who commanded the military division, hastened to report to the President. To him, also, came Holt with the last prayer of the daughter whom, after his interview, he meets in the hall with the announcement that there

\* See Holt to Gen. Mussey in *Refutation*.

is no hope.\* The young girl cast herself down at the foot of the stairs leading to the executive office, appealing to the guardians of the door in the name of God to let her in; conjuring the distracted bystanders to intercede for her; pleading that her mother was too good, too kind to be guilty of the heinous crime laid to her charge. The door remained shut. Inside, the President was being stayed with an "informal discussion" of the subject of commutation on the ground of sex, with which two or three of his confidential advisers saw fit to favor him, the Minister of War delivering himself as follows:

"Surely not, Mr. President, for if the death penalty should be commuted in so grave a case as the assassination of the head of a great nation on account of the sex of the criminal, it would amount to an invitation to assassins hereafter to employ women as their instruments, under the belief that if arrested and condemned they would be punished less severely than men. An act of executive clemency on such a plea would be disapproved of by the government of every civilized nation on earth."†

At the hour of half-past eleven, Hancock, accompanied by the attorney general appeared before Judge Wylie and, by order of the President, declined to obey the writ on the ground that it was suspended; and, although cavalrymen were still kept stationed at points along the line from the White House to the arsenal to

\* See article by Clampitt, *North Amer. Rev.*, September, 1880.

† See Note IV to this chapter in Appendix.

transmit a reprieve at the last moment, all hope was finally abandoned.

In the meantime, crowds of people had been making their way by land and water to catch sight of the execution. The wall inclosing the arsenal grounds concealed the scaffold from persons outside, and those not privileged to enter sought the tops of buildings in the vicinity, the masts of vessels in the river and other places of vantage whence to view the awful scene about to be enacted. The corridors of the prison were filled with soldiers, and none but the relatives, the counsel and religious advisers of the condemned were allowed within the precincts of the prison. On the top of the wall was stationed the Sixth Regiment of Veteran Volunteers and in the yard the First Regiment of the same corps; for the execution was to be of an exclusively military character—General Hartranft being in command and, as an enthusiastic reporter noted, "fine, stalwart specimens of Union soldiers," the executioners, "who did their work well."\* Between the hours of one and two, the death march began; first, the woman already half dead and in her shroud, two soldiers holding her erect; next, Payne, his lips fresh from a declaration of the absolute innocence of the woman before him; unconcerned for his own fate; unobservant of his surroundings; impatient for the end. Herold and Atzerodt follow. The four are ranged on the high scaffold, two on one drop, two on the other. Four graves yawn open close by. The death warrant is read, the nooses adjusted, the hoods

\* Baker's *Hist. Secret Service*, 508, 513-523.

drawn down. Hartranft waves his sword, the two drops fall and the four figures shoot down and then sway to and fro between heaven and earth. The bodies are cut down; a hurried post-mortem examination is made; and, then, inclosed in gun boxes for coffins, they are buried in a row. The soldiery depart to the wail of trumpet and beat of drum. Silence descends on the old arsenal, broken only by the tramp of the sentinel set to guard the unhallowed dead.\*

\* Mr. Clampitt, in his article in the *North American Review* for September, 1880, quotes from a letter of Gen. Hartranft sent to the President on the morning of the execution:

“The prisoner Payne has just told me that Mrs. Surratt is entirely innocent of the assassination of President Lincoln, or of any knowledge thereof. He also states that she had no knowledge whatever of the abduction plot, that nothing was ever said to her about it, and that her name was never mentioned by the parties connected therewith.”

At the close of the letter General H. wrote . . . “I believe that Payne told the truth in this matter.”

## CHAPTER VI

### THE QUESTION OF JURISDICTION

THE "Instructions to the Armies of the United States in the Field," of April, 1863, state that military jurisdiction is of two kinds: first, that which is defined by act of Congress, and, second, that which is derived from "the common law of war."\* General Ewing, at the close of the testimony on the trial just reviewed, complaining of the multiplicity of offences included in the Charge, and the judge advocate maintaining there was but "one transaction"—"a traitorous conspiracy"—and various acts "traitorously" committed in pursuance thereof, the former inquired by what statute the offence was defined and its punishment fixed; and his adversary made the following reply:

"I think the common law of war will reach that case. This is a crime . . . committed in the midst of a great civil war, in the capital of the country, in the camp of the Commander-in-Chief of our armies, and if the common law of war cannot be enforced against criminals of that character, then I think such a code is in vain in this world.

"Mr. Ewing: Do you base it, then, only on the law of nations?

"The Judge Advocate: The common law of war."†

\* Appendix to Pitman.

† Pitman, 247.

And it was upon "the common law of war" that the government was obliged in the end to rest the jurisdiction of the tribunal it had called into existence. This fundamental question was lost sight of amid the universal outcry for the punishment of those clearly guilty of taking part in the crime against the nation; but the presence of a female citizen of the United States on trial before a board of army officers, provoked, even in this period of vengeful feeling, the unfavorable criticism of the press, the courts and the legal profession.\* By its own members, the jurisdiction of the commission was regarded as a matter of course. Indeed, as they were told by the special judge advocate, "they could question the authority constituting them no more than they could question their own existence." They were constrained, nevertheless, to tolerate two powerful attacks upon their right to try the defendants, which must have ruffled their professional equanimity.

The argument of Reverdy Johnson was a model of closely-reasoned, convincing speech. He contended that military tribunals could try none but military offences, and those only when the persons committing them belonged to the army or the navy; that civilians cannot be subjected to military law in time of war any more than in time of peace; that, even if the power to institute such a commission as the present was an incident of the war power, that power is lodged not in the executive but exclusively in the Congress, and the Congress, neither by the articles of war nor by the two acts *in pari materia* passed during the rebellion, had

\* See Note I to chapter in Appendix.

authorized any such tribunals; on the contrary, “until the rebellion a military commission like the present, organized in a loyal State or Territory where the courts are open and their proceedings unobstructed . . . is not to be found sanctioned or the most remotely recognized, or even alluded to, by any writer on military law in England or in the United States, or in any legislation of either country.” The counsel further maintained that “traitorous conspiracy” is nothing less than treason, and treason, under an express provision of the Constitution, must be tried by the civil courts.” “We learn that the very chief of the alleged conspiracy has been indicted and is about to be tried before one of these courts.” If he . . . is to be and can be so tried, upon what ground of right, of fairness or of policy, can parties who are charged to have been his mere instruments be deprived of the same mode of trial?” In conclusion, the counsel claimed that the District of Columbia had not been occupied as enemy’s territory; that martial law had never been declared in the loyal states by any competent authority; that the suspension of the writ of *habeas corpus* carried with it no other rights than the right to inquire into the cause of arrest; and, in illustration of the general scope of his argument, cited the trials in the civil courts of England, in the time of war and domestic violence—the writ of *habeas corpus* being suspended—of persons who attempted to assassinate the king, of the assassin of Percival, the prime minister, and of Hardy and Horne Tooke—“no one suggesting any other mode.”

Ewing's attack, coming from a comrade of the officers composing the commission, was outspoken to the point of audacity. He put it in syllogistic form. "Under the Constitution none but courts ordained and established by Congress can exercise judicial power, and these courts must be composed of judges who hold their offices during good behavior. Congress has not 'ordained or established' you a court and you are not judges who hold your offices during good behavior. You are, therefore, no court under the Constitution, and you have no jurisdiction in these cases, unless you obtain it from some source which overrules this constitutional provision.

"The President cannot confer *judicial* power upon you, for he has it not. His mandate . . . were no better than the simple mandate to take A. B., C. D., E. F., or G. H. and put them to death.

"The President . . . may constitute courts pursuant to the Articles of War, but he can give them jurisdiction over citizens," only '*in cases arising in the land or naval forces*,' to which "these defendants did not and do not belong.

"Congress has not attempted to grant you the power; Congress could not grant it. . . . Congress has authorized the suspension of the writ of *habeas corpus*" . . ., but "this goes to imprisonment not trial, conviction or punishment."

The gallant general even sought out the judge advocate in his last refuge—*silent leges inter arma*—and expounded his "common law of war" after the following fashion:

"Cases have often arisen, in which robber-bands, whose vocation is piracy on the high seas, or promiscuous robbery and murder on land . . . may be lawfully put to the sword without quarter, in battle, or hung on the yard-arm or otherwise put to death, . . . without trial. . . . A military court may be called, but it is *advisory* merely; the general acts, condemns and executes. . . . Over these classes his power is restrained only by the usages of war among civilized nations. But these defendants are not charged as spies, pirates, or armed and organized marauders or enemies captured in war . . . They belong to none of these classes over whom military discretion or martial law extends, unless they extend over and embrace all the people of the United States."

The counsel closed with a warning which now will be regarded as prophetic:

"Our judicial tribunals at some future day . . . will be again in the full exercise of their constitutional powers and may think, as a large proportion of the legal profession think now, that your jurisdiction in these cases is an unwarranted assumption." And, in that event, "your sentence will be held in law no better than the rulings of Judge Lynch's courts in the administration of lynch law."<sup>\*\*</sup>

The special assistant in his reply was as dogmatic in the affirmation of the jurisdiction of the tribunal of which he was a member as he had been in the affirmation of the guilt of every one of the accused. He, in fact, viewed the attacks of counsel as an aspersion upon the President for attempting "to prevent the consummation of the traitorous conspiracy." His characterization of the argument of Reverdy Johnson

\* Pitman, 264.

as a “plea on behalf of an expiring and shattered rebellion” has already been noticed; but courtesy of this character the brilliant career of the junior counsel forbade, and Bingham did but gently remind Ewing that in the enforcement of martial law in the West, where he had been recently in command, he might have subjected himself to “the same stern judgment he now invokes on others.” To the assertion of the counsel that the civil courts are open, he made answer: “They are closed throughout half of the republic, and were only open in this District on the day of . . . the traitorous assassination of your President, and are only open at this hour by force of the bayonet.” Booth, he said, “was pursued by the military power of the government, captured and slain. Was this an act of usurpation? If not, I would be glad to know by what law the President is condemned for arresting in like manner and . . . subjecting to trial . . . any and all the other parties to the same damnable conspiracy . . . by a military tribunal.” To Ewing’s audacious arraignment of the officers sitting around the table as “no court under the Constitution,” he replied: “The power of this government to try and punish military offences by military tribunals is no part of the ‘judicial power of the United States’”; it is implied in the grants of power to make war, to make rules for the government of the land and naval forces, and is necessary to carry the enumerated powers into effect. In fact, the special assistant did not share the fondness of his chief for “the common law of war.” On the contrary, he rested his case

mainly on the President's order of September 24th, 1862, suspending the writ of *habeas corpus* and declaring "all rebels, their aiders and abettors, within the United States, and all persons discouraging enlistments, resisting drafts or guilty of any disloyal practice . . . subject to martial law and liable to trial and punishment by court-martial and military commission"; construing the order as a proclamation of martial law over the entire Union, whether the particular state or district were the theatre of war or not, and upholding the authority of the executive of its own motion to do such an act; in effect enthroning the military commanders of the departments in the loyal states as absolute masters of the life and property of the citizen. "To my mind, nothing can be clearer than that citizen and soldier alike, in time of civil or foreign war, after a proclamation of martial law, are triable by military tribunals for all offences in the interest of or in concert with the enemy." Again: "Who will dare say that in time of civil war, no person can be deprived of life, liberty or property without due process of law? This is a provision of your Constitution, than which there is none more just and sacred in it. It is, however, only a law of peace and not of war. In war, it must be and is to a great extent inoperative and disregarded." And the counsel adds: "That the proclamation covers the offence charged here, no man will or dare to deny. Was it not a disloyal practice? Was it not aiding and abetting the insurgents to enter into conspiracy with them to kill and murder within your capital and your intrenched camp your Com-

mander-in-Chief, your Lieutenant-General, your Vice President and your Secretary of War?"

Nevertheless, confident of the validity of such a proclamation as he would have the court believe he was, this leading member of the House of Representatives did not venture to rely for the exercise of so sweeping a power upon the executive alone; but, calling to its aid the department to which he himself belonged, cited the act of Congress of March 3rd, 1863, which authorized the President to suspend the writ of *habeas corpus* and made his orders a defence in all suits brought in consequence of acts done in pursuance thereof, as having ratified and confirmed the proclamation, though no express mention was made of it in the act. Moreover, near the close of his argument, he accepts the challenge of his learned adversary to produce a single statute authorizing or regulating military commissions in cases similar to the one at bar, by producing two; one, a section of the act of March, 1863, providing that "all persons who, in time of war or rebellion against the United States, shall be found lurking as spies in or about the camps, etc., of the army or elsewhere shall be triable by military commission and shall, upon conviction, suffer death"; the other, the act of July 2nd, 1864, that provides: "The commanding general in the field or the commander of the department, as the case may be, shall have power to carry into execution all sentences against guerrilla marauders for robbery, arson, burglary, etc., and for violations of the laws and customs of war, as well as

sentences against spies, mutineers, deserters and murderers."

From the counsel's premises, the conclusion is inevitable that, if the prisoners at the bar properly belonged in the category of offenders mentioned in these statutes, the military commander of the District, according to the "Instructions" to the army cited above, might have dispensed with a commission and summarily strung up in the arsenal yard the whole eight as "enemies of the human race."

The commission, after hearing these weighty arguments on the question of its jurisdiction, did not deem it worth while even to take a vote in reconsideration of its formal action overruling the plea interposed on the arraignment; but the attorney general, thinking something more should be done to satisfy public opinion, reduced to writing the verbal opinion he appears to have rendered to the President before the commission was organized. This official deliverance is in some respects unique. In the first place, no mention is made of the proclamation of martial law the special assistant principally relied on, but the law officer of the government bases his opinion upon the ground so much favored by the judge advocate general, viz.: "the common law of war." He first summarizes the facts: the President was assassinated at a theatre in Washington; civil war being flagrant, the city defended by fortifications, the principal police being federal soldiers and the President's house and person under the guard, or should have been, of soldiers; martial law declared in the District; but the

civil courts open, holding regular sessions and transacting business as in times of peace. On this state of facts, he gives his reasons why the conspirators in question ought to be tried by a military tribunal. First: Civil courts are created by a law of Congress, military tribunals exist in time of war, Congress having the power to prescribe how they may be constituted; but, if Congress do not, they nevertheless are constituted under the laws and usages of civilized warfare. It is too plain for argument, in the view of the attorney general, that Congress cannot, either in war or in peace, create military tribunals to try persons not in the land or naval forces; but it does not follow that they cannot be created at all. Second: The law of nations is a part of the law of the land; and the laws of war constitute much the greater part of the law of nations. By that law all the people of the respective belligerents, in war, are enemies to each other—open and active enemies or secret active participants, such as spies, brigands, jayhawkers, rebels and assassins. As to the former class, there is no question, the commander of an army having the same power to organize military tribunals when occasions arise as to set his squadrons in the field. As to the latter, the question is whether the laws and usages of war authorize such tribunals to determine their fate; and, in the affirmative, the attorney general cites Wheaton as holding that irregular bands of marauders are liable to be treated as lawless banditti, and, also, Patrick Henry's speech in the Virginia Convention to ratify the Constitution of the United States, declaring that a pirate,

an outlaw, or a common enemy of mankind may be put to death at any time—"hunted down like wolves." In response to those who say that when they conflict with the Constitution the laws of war must give way, this expounder of "the common law in war" advances a distinction which has the merit at least of being altogether new:

"The guarantees of the Constitution refer to *crimes*. Infractions of the law of nations are *offenses*, many of which are not crimes at all, such as running blockades, holding intercourse with the enemy, acting as a spy, joining banditti, jayhawking guerillas, etc. Offenses against the laws of war, whether crimes or not, must be punished under the laws of war. *Crimes* must be dealt with under the provisions of the Constitution.

"The law of nations . . . has decided that jayhawkers, banditti, etc., are offenders against the laws of nature and of war, and as such amenable to the military.

"Booth and his associates were secret active public enemies. His exclamation '*sic semper tyrannis*' on the stage . . . and his dying message, 'Mother, I died for my country,' shows he was not an assassin from private malice but that he acted as a public foe."

The attorney general's conclusion, therefore, is:

"If the persons who are charged with the assassination of the President committed the deed as public enemies, as I believe they did, and whether they did or not is a question to be decided by the tribunal before which they were tried, they not only can, but ought to be tried before a military tribunal. If the persons charged have offended against the laws of

war, it would be as palpably wrong for the military to hand them over to the civil courts, as it would be wrong in a civil court to convict a man for murder who had in time of war killed another in battle.”\*

In the meantime, the question, which the commission treated as a technicality of constitutional law it was bound by the very law of its existence to ignore, was passing up for final adjudication to the highest tribunal in the land. In the fall of 1864, in the state of Indiana, by order of the commanding general of the district, certain members of an organization called the “Sons of Liberty” were arrested and put in jail. This secret society the judge advocate general denounced in his official report as “the echo and faithful ally” of the rebellion, and the guilty men engaged in it as having “trodden under foot every sentiment of honor and every restraint of law, human and divine.” “Judea,” he stated, “produced but one Judas Iscariot and Rome . . . but one Catiline; and yet . . . there has arisen in our land an entire brood of such traitors all animated by the same parricidal spirit and all struggling with the same relentless malignity for the dismemberment of our Union.” Three of these Judas-Catilines were brought to trial at Indianapolis before a military commission appointed by the commanding general, on charges, preferred by Colonel Burnett, of conspiracy against the government, affording aid and comfort to rebels, inciting insurrection, disloyal practices and violations of the laws of war; and, on the

\* Atty.-Gen.’s Opinion in Pitman’s Appendix.

eighteenth of December, found guilty and sentenced to be hung. The findings and sentences, approved by the commander, were sent to the President and by him referred to the judge advocate, who recommended that the sentences be carried into effect. Lincoln, at the time of his death, still had the proceedings under advisement; but his successor ordered the condemned to be executed on the nineteenth of May, 1865. On the tenth of that month, just as the trial of the assassins was about to commence, Milligan—one of the three—filed in the circuit court of the United States, in pursuance of the act of March, 1863, a petition for his discharge, setting forth that he had never belonged to the land or naval forces or to the militia while in actual service; and the two judges, differing in opinion, certified the questions involved to the Supreme Court. Thereupon, President Johnson, after commuting the sentence of one of the others to imprisonment for life, directed the suspension of the other sentences until the second day of June; and, at the last moment, in deference to the expostulations of Justice David Davis and Governor Morton, sent by telegraph a like commutation in the case of Milligan and his fellow-prisoner.\*

The main question—had the military commission jurisdiction to try Milligan?—came on for argument at Washington in the January term of 1866; Benjamin F. Butler being associated with the attorney general, and a distinguished array of counsel appearing for the

\* Headley's *Confederate Operations in Canada* (Neale Pub. Co.), p. 452-4; Rhodes, V, 328.

petitioner. Speed repeated in somewhat diluted form the disquisition on the law of war he submitted to the President in the case of the assassins, reinforced on this occasion by Bingham's argument in support of the proclamation of September, 1862, and its ratification by Congress; claiming that Milligan's offences came under one of the classes mentioned in that paper. That Milligan never belonged to the land or naval forces, according to the attorney general, was of no consequence. "Neither residence nor propinquity to the field of actual hostilities is the test to determine who is or who is not subject to martial law." The crimes charged were committed within the military lines of the army and upon the theatre of military operations, in a state which had been and was then threatened with invasion. The guarantees of the Constitution are no "restraint on the war-making power." "These, in truth, are all peace provisions, and, like all other conventional and legislative laws and enactments, are silent amidst arms."

David Dudley Field, who was first heard on behalf of the petitioner, defined a military commission as "originally an advisory board of officers convened for the purpose of informing the conscience of the commanding officer in cases where he might act for himself if he chose." The commission in the present case depends entirely on the executive will, he said, putting the question: "Has the President in time of war, upon his own will and judgment, the power to bring before his military officers, any person in the land and subject him to trial and punishment even to death?" Whence

is this “awful power” derived? Not from the “executive power” granted by the Constitution. Not from the clause making the President commander-in-chief. To command an army requires the control of no other persons than the officers, soldiers and camp followers. Congress is empowered to do all the rest necessary. Military tribunals for the trial of non-military persons “are inconsistent with the liberty of the citizen, and can have no place in constitutional government.” Strictly speaking, the counsel points out, “there is no such thing as martial law; it is martial rule; the will of the commanding officer, and nothing more, nothing less.”

James A. Garfield, then a representative in Congress from the state of Ohio, was heard next. “To maintain the legality of the sentence,” said the man to be the next President of the United States to fall by the hand of an assassin, “opposite counsel were compelled not only to ignore the Constitution but to declare it suspended—that from the fifth day of October, 1864, to the ninth day of May, 1865, martial law alone existed in Indiana”; the commanding general having power “to lay his hand on every citizen, try him, sentence him and put him to death.” To show what the representatives of the people thought on the subject, he quoted from an appropriation bill, passed by the House near the close of the thirty-eighth Congress (1863-5), a section providing that “no person shall be tried by court-martial or military commission in any state or territory where the courts are open, except persons in the military and naval service . . . or rebel enemies charged

with being spies";—a section, as the counsel noted, inserted because of "alarm at the growing tendency to break down the barriers of the law," and the striking out of which by the Senate resulted in the failure of the entire measure.\*

But it was the argument of Jeremiah S. Black that rendered the discussion a contribution to the literature of the country. It consisted of a series of weighty propositions clothed in that racy diction in the use of which he was without a rival. "We submit," thus the counsel began, "that a person not in the military or naval service cannot be punished at all until he has a fair, open and public trial before an impartial jury . . . ; a proposition which ought to be received as true without any argument to support it; because if it be not a part of our law, then this is not a free country." So far from the guarantees of the Constitution being in force only in time of peace, it was in time of war, the counsel contended, that they were most needed. "Our wise forefathers knew that tranquility was not to be always anticipated in a republic; the spirit of a free people is often turbulent; civil war might come," and "prosecutions for political offences" instituted "on charges founded upon the information of spies and detectives who make merchandise of their oaths and trade in the blood of their fellowmen"; and it was for this very reason that they made trial by jury "perpetual and universal." "The truth is that no

\* The counsel further stated that almost every senator acknowledged the "justice" of the section but "feared it might cripple the executive."

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authority exists anywhere in the world for the doctrine of the attorney general. No judge or jurist, no statesman or parliamentary orator, on this or the other side of the water, sustains him. Every elementary writer is against him. . . . No book can be found in any library to justify the assertion that military tribunals can try a citizen at a place where the courts are open.”

The counsel closed by delineating with a few master strokes what a military commission particularly is:

“No human being in this country can exercise any kind of public authority which is not conferred by law; and under the United States, it must be given by the express words of a written statute. . . . Courts-martial . . . are authorized; they are legal institutions; their jurisdiction is limited, and their whole code of procedure is regulated by act of Congress. Upon the civil courts, all the jurisdiction they have or can have is bestowed by law. But a military commission is not a court-martial, and it is not a civil court. . . . It has no law of its own. Its terrible authority is undefined, and its exercise without any legal control. It has no legal origin and no legal name among the children of men”; and it exercises “all power for the paradoxical reason that none belongs to it rightfully.”

“The power exercised through these military commissions is not only unregulated by law, but it is incapable of being so regulated. It asserts the right of the executive government without the interposition of the judiciary, to capture, imprison and kill any person to whom that government or its paid defendants may choose to impute an offence. . . . It operates in different ways; the instruments which it uses are not always the same; it hides its hideous features under many

disguises; it assumes every variety of form. But, in all its mutations of outward appearance, it is still identical in principle, object and origin."

"But, while powerless to do good," military commissions "may become omnipotent to do harm. They would be organized to convict, and the conviction would follow the accusation as surely as night follows day. A government, of course, will accuse none before such a commission except those whom it predetermines to destroy. The accuser can choose the judges, and will select those who are known to be . . . the most ready to do whatever may please the power which gives them pay and promotion. The willing witness could be found as easily as the superserviceable judge. The treacherous spy and the base informer would stock the market with abundant perjury; for the authorities that employ them will be bound to protect as well as to reward them."

The voice is the voice of Jeremiah Black, but the doctrine is the doctrine of Reverdy Johnson; in this instance received without insult at the bar and soon to be sanctioned from the bench.

General Butler replied for the United States, and, by his very first concession, nullified by anticipation the sole distinction subsequently sought to be drawn between the case in which he was engaged and the case of the accused assassins. "We do firmly agree that if at the time of these occurrences there were no military operations in Indiana, if there was no army there, if there was no necessity of armed forces there . . . then this commission had no jurisdiction to deal with the relator, and the question proposed may as well be answered in the negative. . . . The great and

determining fact stated, without which we have no standing in court, is that these acts of Milligan and his felonious associates took place in the theatre of military operations within the lines of the army, in a state which had been and then was threatened with invasion."

In warding off the point that the civil courts were open, Butler did but echo Bingham: "If the soldiers of the United States, by their arms had not held the state from intestine domestic foes within and the attacks of traitors without . . . there would have been no courts in Indiana where a judge could sit in peace to administer the law." He reminds the court that civil courts were in session in Washington during the whole of the rebellion and yet the capital was "nearly the whole of the whole time under martial law"; their courts being but the ordinary tribunals and in operation "only by permission by the military power"—overlooking the fact that the tribunal he was addressing held its regular terms every winter of the war.\*

What is still more noteworthy, General Butler agreed with General Ewing in the latter's audacious assertion: "You, gentlemen, are no court." To call a military commission "a court," says the recent military commander of New Orleans, is a "mistake." "It is not a court either under or by virtue of, or without the Constitution." "Whatever it may be" it "derives its power and authority wholly from martial law and by that law . . . only are its proceedings to be adjudged and reviewed." A dearth of precedents he

\* Note II to this chapter in Appendix.

admits, but he claims "it is because the facts are unprecedented." Show us an instance "in a civilized and Christian country where almost one half of its citizens undertook, without cause, to overthrow the government and where coward sympathizers . . . plotted in the security given by the protecting arms of the other half to aid such rebellion and treason, and we will perhaps show a precedent for hanging such traitors by military commissions." "This," says the counsel, as if certain of his cause, "is the value of this case; whenever we are thrown into war again . . . we shall have set precedents how a nation may preserve itself from self-destruction."

The court did indeed establish a precedent of exceeding great value; but of a kind the reverse of that which the counsel so confidently anticipated. On the third day of April, this tribunal created by the Constitution, composed of nine judges holding office during good behavior, without a dissenting voice ordered the discharge of Milligan and his co-defendants on the ground that the military commission had no right to try and condemn them; and, in pursuance of the order, the President remitted the further execution of their sentence. At the opening of the December term, two opinions were handed down; one written by Justice Davis—the life-long friend of Lincoln who, while President, elevated him to the bench—and concurred in by four of his associates; and one by the Chief Justice—concurred in by three. That, as a matter of law, the President had no power to institute the commission in

question and that, as a matter of fact, the Congress had not empowered him to do so, the court was unanimous; but, whereas the majority held that the Congress had no power to authorize such a tribunal, the minority held otherwise had the Congress seen fit to exercise it.\* The guarantees of the Constitution were treated with much more reverent touch by the Supreme Court than by Bingham and Butler. "These securities for personal liberty," said Judge Davis, "were such as wisdom and experience had demonstrated to be necessary for the protection of those accused of crime. And so strong was the sense of the country of their importance, and so jealous were the people that these rights might be denied by implication, that when the original Constitution was proposed for adoption, . . . but for the belief that it would be amended so as to embrace them, it would never have been ratified."

Listen to the judicial refutation of the doctrine that governed, alike, the commission in the Milligan case and the commission in the case of Mrs. Surratt:

"The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of great exigencies of government. Such a doctrine leads directly to anarchy or despotism."

\* See Note at end of chapter.

"It is not pretended that the commission was a court ordained or established by Congress." They cannot justify on the mandate of the President; because he is controlled by law and has his appropriate sphere of duty, which is to execute and not make the law."

On the other hand "the common law of war," so cherished by Holt and Speed, found but scant favor:

"But it is said that the jurisdiction is complete under the 'laws and usages of war.' It can serve no useful purpose to inquire what those laws and usages are, where found, and on whom they operate; they can never be applied to citizens in states which have upheld the authority of the government, and where the courts are open and their process unobstructed. And no usage of war could sanction a military trial there for any offence whatever of a citizen in civil life, in nowise connected with the military service. Congress could grant no such power; and to the honor of our national legislature be it said it has never been provoked by the state of the country even to attempt its exercise."

"Citizens of states where the courts are open, if charged with crime, are guaranteed the inestimable privilege of trial by jury. This privilege is a vital principle, underlying the whole administration of criminal justice; it is not held by sufferance, and cannot be frittered away on any plea of state or political necessity."

"But it is claimed that martial law covers with its broad mantle the proceedings of this military commission. . . . It will be borne in mind that this is not a question of the power to proclaim martial law, when war exists in a community and the courts and civil authorities are overthrown. . . . If armies were collected in Indiana, they were to be employed in

another locality, where the laws were obstructed and the national authority disputed. On her soil there was no hostile foot; if once invaded, that invasion was at an end, and with it all pretext for martial law. Martial law cannot arise from a *threatened* invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration. . . . As necessity asserts the rule, so it limits its duration; for if this government is continued *after* the courts are reinstated, it is a gross usurpation of power. Martial law can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war.”\*

\*The following from the opinion of Chase presents the precise point of difference between the majority and the minority of the court:

“We cannot doubt that in such a time of public danger,” as existed in the state of Indiana at the time of the arrests in this case, “Congress had power . . . to provide for the organization of a military commission for the trial of persons engaged in this conspiracy. The fact that the Federal courts were open was regarded by Congress as a sufficient reason for not exercising the power; but that fact could not deprive Congress of the right to exercise it. . . . That body did not see fit to authorize trials by military commissions . . . but” (in the act suspending the *habeas corpus* providing for the discharge of the prisoners held under it, if not brought to trial speedily in the regular courts) “by the strongest implication prohibited them.”

Majority: Davis, Nelson, Grier, Clifford, Field.

Minority: Chase, Wayne, Swayne, Miller.

(*Ex parte Milligan*, 4 Wall. U. S. Rep., p. 2.)

## CHAPTER VII

### THE DWINDLING OF THE "GREAT CONSPIRACY"

THIS blow to the validity of the military commission that tried the accused assassins had scarcely been delivered before the cornerstone of its judgment began to crumble. To its death-dealing sentences was indissolubly linked its finding that Jefferson Davis was the prime instigator of the assassination. Two companies of United States soldiers, having fired upon each other in their furious haste to be the first to seize the distinguished fugitive, were already engaged in a shameful scramble before the House of Representatives over the enormous reward offered for his capture. The country clamored for his punishment; and, if the tribunal that convicted his alleged accomplices was justified in pronouncing him guilty, there was nothing to do but to convene another of the same species to reiterate the verdict and order its execution. To this plain course, the chief obstacle was that the late president of the Southern Confederacy was, at least, no "brigand, bushwacker or jayhawker" to be arraigned in his irons within the walls of Fort Monroe before a board of officers, every one of whom, it might be said, he had confronted on the field of battle. If a trial, under "the common law of war," must take place it must be a trial that, like a city set upon a hill, could not be hid—must be, as the doomed regicide boasted, "a deed not done in a corner."

It behooved the Bureau of Military Justice, therefore, to look well to its evidence. On the recent trial the witnesses on this branch of the issue, as we have seen, were paid emissaries detailing scraps of conversation with the leading Confederates in Canada and parol versions of letters purporting to be from the Richmond authorities—testimony taken behind closed doors, without regard to the elementary rules of evidence and unchecked by cross-examination. The managers of the Bureau were fully conscious that, if they could not make a better showing than this, they would not dare to bring their case into the fierce light that would beat upon a military commission before which Davis and Clay were battling for their lives. Accordingly, they cast about to obtain some of the documents with the contents of which their witnesses claimed to be so familiar. The indefatigable Baker, as the result of another trip to Canada, brought back a memorandum of eight letters from Davis to Thompson which he said he saw but was not permitted to copy, much less to carry away, unless their holders were paid a sum which Baker put as high as twenty thousand dollars. Of one of them, dated the eighth of March, he went so far as to furnish a specimen extract: "The consummation of the act that would have done more to have ended strife, being delayed, has probably ruined our cause,"—followed by a Latin sentence which Baker could not recall but which Holt thought "would furnish a key to the whole matter." But this promising clue was not followed up, probably because Baker's price was too high, and, the next summer,

when Holt sent his own agent with funds after the letters, the messenger returned empty-handed and with the decided impression that the precious documents were fabulous.\* Parallel with Baker's search, the attorney general entered into a negotiation with Cleary to purchase the papers of his chief for the same amount of money offered for the private secretary's own arrest; but, by the time this member of the cabinet reached the border with the money in his hand, Cleary had read the testimony against him before the commission and refused to surrender papers to be used in its support.† In such a dearth of corroboratory proofs, the only recourse was another draft upon the unlimited resources of the acknowledged head of these witnesses by profession.

The judge advocate general, it has been said by an excellent authority, "was credulous to the extent of accepting as truth nearly all the statements of detectives and alarmists";‡ nay, more, by daily intercourse with creatures of this species, he had contracted a veritable mania, so that the wilder a tale the more hospitable was its welcome. If Conover was, as he was called, the Titus Oates of the "Great Conspiracy," then Holt was its Shaftesbury; swallowing with gusto every romance this most abandoned of men was ever ready to invent for him. And, as will be seen, nothing could shake permanently his faith in his protégé—neither confession nor flight, neither betrayal, con-

\* Holt's testimony, Imp. Inv., 28-29; Baker's testimony, Imp. Inv., 30-31.

† Speed's testimony, Imp. Inv., 804-5.

‡ Rhodes' *Hist. (U. S.)*, V, 327.

viction nor imprisonment. It was Conover who testified before the commission that about a week before the assassination he was in Thompson's room in Montreal when Surratt entered with despatches from Richmond—one from Benjamin, the Confederate Secretary of State, and a letter in cipher from Davis—on the perusal of which Thompson exclaimed: "This makes it all right." To bolster up this bit of testimony, Conover, in the fall of 1865, brought to the Bureau seven deponents—among them his wife and sister,—and Holt reduced their statements to writing which were sworn to before him. Among the rest were two men, passing under the names of Campbell and Snavel, who deposed that early in the spring of 1865 they were present at an interview between Surratt on the one hand, and Benjamin and Davis on the other, in the capitol at Richmond, when the plot to murder President Lincoln was discussed and approved. Some of these witnesses were taken by Holt before the President and the Secretary of State and subjected to another examination, but so far as appears, without result.\* In fact, it was from the President and the Secretary of State that the propulsive ardor of the managers of the prosecution received its first check. Johnson's persistence in following the plan of his predecessor for the reconstruction of the lately insurgent states wrought a change in his attitude toward traitors most surprising in one whose life had been spared only because of the

\* Reports of Assassination Committee, No. 104, 1st Sess., 39th Cong., H. R., July, 1866.

lack of nerve in the wretch appointed to slay him. Not only was a general amnesty proclaimed, but special pardons to prominent secessionists in the excepted classes fell thick and fast. Baker, by a too rigid surveillance over the pardon-brokers haunting the White House, made his presence there intolerable, and the veteran detective, in revenge, was soon in hot pursuit of a letter from the former military governor of Tennessee making overtures to President Davis, which, like the letters from Davis to Thompson, he professed to have read but never was able to recover.\* Clemency, indeed, became the order of the day. Even O'Laughlin, Arnold, Spangler and Mudd, languishing on the burning sands of the Tortugas, caught gleams of hope.† As for Jefferson Davis, did not Speed, the author of the opinion in pursuance of which the military commission was organized, declare he could not be tried by such a tribunal, but must be tried by a jury for treason? In November, the Minister of War revoked the rewards for the arrest of Thompson, Sanders and Cleary and John H. Surratt.‡ In the midst of this retiring ebb, came the opinions in the Milligan case, and the discomfiture of the Bureau was complete.

But the radicals in the Congress, crowding to the front of the hand-to-hand struggle with an apostate President, knew but little of, and cared less for, the embarrassments of the managers of this institution.

\* L. C. Baker's testimony on Imp. Inv.

† *Life of Dr. Mudd* by daughter (Neale Pub. Co.), Chap. XII.

‡ Speed's testimony on Imp. Inv. *ut supra*; Stanton's testimony in Report of Sec. of State to H. R., 39th Cong., 2nd Sess., Dec., 1866. Ex. Doc. No. 9.

On the ninth of April, 1866, the House adopted a resolution instructing the judiciary committee to inquire whether there was probable cause to believe that any of the persons named in the proclamation of rewards of May 3rd, 1865, were guilty as alleged, and, if so, whether any legislation was necessary to bring them to trial; and in the debate that ensued the views of the leaders were given to the world.

“Jefferson Davis is no ordinary assassin or pirate. . . . He stands charged by the government with the murder of the President . . . and that charge, as I am well assured, is amply verified by proofs which will soon be given to the public, and awaken a stronger and sterner demand for his punishment.

“The nation cannot afford to submit the question of the right of a state to secede to a jury of twelve men in one of the rebel states. . . . Let Jefferson Davis be tried by a military court as he should have been promptly at the time other and smaller offenders were dealt with a year ago. Let him have the compliment of a formal inquiry to determine what the whole world already knows, that he is immeasurably guilty. And when that guilt is pronounced, let the government erect a gallows and hang him in the name of the Most High.”\*

The proofs so confidently alluded to by the orator as about to be given to the public consisted of Conover’s testimony on the Conspiracy Trial and the depositions of the witnesses he had brought to the Bureau and which Holt laid before the committee, accompanied by an “explanatory argument.” Before the

\* *Globe*, 39th Cong., 1st Sess., pp. 1854, 2283-4.

committee, Conover appeared in person; his testimony was read over to him and he re-swore to its truth. Merritt, another witness before the commission, also, appeared and acknowledged on cross-examination that he had received for his services six thousand dollars. Campbell and Sneval, having been brought from New York, confounded their suborner by testifying that the depositions were written out for them by him and sworn to for pay. Conover denounced his betrayers as enemies to his country in such moving terms that the committee allowed him to go to New York to find other witnesses; in which city he escaped from the officer having him in custody and disappeared. The crestfallen judge advocate reappeared before the committee, protesting that "there was nothing in the testimony" of the persons he examined, "or in their manner calculated to excite doubt as to their truthfulness," but acknowledging that Conover's disappearance "had left on his mind" a strong impression that Conover had been guilty of a most atrocious crime committed under what promptings he "was unable to determine." The majority of the committee, in their report to the House, observed that the retracting deponents "failed to state any inducement or consideration which seemed a reasonable explanation of the course they had pursued," and, on this account, the committee were "not able to say whether the original statements are true or false"; nevertheless they conclude that "the testimony taken on the trial of the assassins justifies the inference that the murder of Mr. Lincoln was procured by the use of money furnished by the Richmond

government"; and recommend the adoption of a resolution "that it is the duty of the executive department . . . to proceed with the investigation of the facts connected with the assassination . . . without unnecessary delay, that Jefferson Davis and others named in the proclamation . . . may be put upon trial and properly punished if guilty, or relieved from the charges against them if innocent";—a recommendation which the House followed at the close of the session.\*

During the recess the judge advocate appealed to the public in a pamphlet entitled: "A Vindication of Judge Holt from the foul slanders of traitors, confessed perjurors and suborners, acting in the interest of Jefferson Davis," to which were appended exculpatory letters from Stanton and Boutwell, the chairman of the committee. That, by the date of this publication, he had discovered "under what promptings" his favorite witness committed his "atrocious crime," which when before the committee he "was unable to determine," sufficiently appears from the following extract:

"It is clear that a conspiracy has been formed to defame the judge advocate general and the Bureau of Military Justice. At the bottom of this conspiracy or actively engaged in executing its purposes is Sanford Conover, who, after having been fully proved guilty of subornation of perjury, has unquestionably sold himself to the friends of Davis and is seeking with them to destroy the reputation of a public officer

\* Reports of Assassination Committee cited *supra*.

whose confidence he gained . . . by the most solemn protestations.”\*

Let us hasten to the end of this odious business. In November following, under a warrant issued on the affidavit of Campbell under the name of Hoone, Conover was arrested and brought to Washington, entertaining the officer on the way by confessing that he suborned the witnesses from a desire to avenge himself on Jefferson Davis by whose order he had been confined in “Castle Thunder” and who had, besides, “insulted his wife.” Indicted under the name of Charles A. Dunham for perjury committed in his testimony contradicting Campbell, he was tried in Washington in February, 1867, convicted, and sentenced to ten years’ imprisonment in the Albany Penitentiary.†

Thus fell the main pillar of the “Great Conspiracy.” The President and those members of the cabinet who stood by their chief, for their part, let Holt’s “atrocious” criminal lie where he had fallen—Secretary Seward testifying as follows:

“My own theory about Jefferson Davis was that until this proclamation was withdrawn and peace was proclaimed by the President, Jefferson Davis was amenable to trial for complicity with the assassin . . . if there was evidence of it . . . One or two witnesses were examined before the President and myself. . . . Sometime after that, the testimony of these witnesses was discredited and destroyed by transactions in which

\* Pamphlet in Cong. Lib. See *A Belle of the Fifties*, by Mrs. C. C. Clay, 326-7.

† Reports of Assassination Committee cited above and Note I in Appendix.

Conover appeared and the evidence of the alleged complicity of Jefferson Davis thereupon failed.”\*

While these disgraceful circumstances were being brought to light the combat between the “acting President” (as his enemies were careful to style him) and the party who put him in the line of succession deepened. Johnson, instead of making treason and traitors in the South odious by the use of the rope, went “swinging around the circle,” making treason and traitors in the North odious by the use of his power of speech. The principal cities of the West greeted him with taunts and jeers and threats; and, in the fall, he met with overwhelming defeat at the polls. When Congress met for the short session, the majority, deeply mortified by the recollection of the panic into which they had been thrown during the campaign, were so enraged by the apparent determination of their antagonist to keep up the fight as to actually believe that, in condemning Atzerodt, the commission had fallen into a shocking blunder, the signer of his death warrant being in fact his partner in the conspiracy. Loan, a representative from Missouri, said on the floor: “An assassin’s bullet, wielded and directed by rebel hands and paid for by rebel gold, made Andrew Johnson President. The price he was to pay for his promotion was treachery to the Republic and fidelity to the party of treason and rebellion.” Ashley of Ohio spoke of Johnson as “the man who came into the Presidency through the door of assassination,” and called atten-

\* Imp. Inv., 379-80.

tion to "the dark suspicion that crept over the minds of men as to his complicity in the assassination plot." And Conover (*alias* Dunham), instead of being taken to the penitentiary to serve out his sentence, was detained in the jail of the District that he might earn his pardon by fabricating evidence against this usurper of the pardoning power. Give him liberty, he implored the representatives who visited his cell, and he could lay his hands on witnesses and documents to prove that Johnson and Booth had corresponded with each other; that, at the second inauguration, it was arranged that Booth should kill Lincoln, an arrangement which accounted for the Vice President's strange conduct on that occasion; that Booth paid several visits to Johnson at the Kirkwood, the concealment of weapons in that hotel being a mere blind to cause it to appear that the Vice President was an intended victim; that Booth boasted in his flight of having made Andy Johnson President and "if he went back on him he would have him hung higher than Haman."

To such preposterous proposals, the impeachers not only lent a willing ear, but they drafted for the proponent a petition for his pardon to the officer they meant to impeach, which the judge advocate, notwithstanding his recent experience of the perfidy of the witness, backed with his recommendation.\*

Another incident of the Impeachment Investigation added fuel to the flames. The reappearance of Baker before the committee, while it did not result in the

\* See my *Impeachment and Trial of President Johnson*, 278-81, 292.

production of the letter of Johnson, did lead to the unearthing of the diary of Booth. This little book disappeared from view from the day it was delivered to Stanton until it was passed over to the judge advocate just before the convening of the military commission. Stanton suppressed it for the same reason that he ordered the secret burial of the dead author. Holt suppressed it, not so much because it was not, strictly speaking, competent evidence, as because its production would have gone far to establish a premeditated plot to capture, the failure of which begat the design to kill. The consequence was that, in the voluminous mass of testimony taken at the trial, there was not the slightest indication that the crippled outlaw left behind him an apology for his crime, and the country might have been dependent upon mere rumor for its knowledge of so interesting a relic, had it not been for the publication of Baker's *History of the Secret Service*, in which mention was made of a memorandum recording "the adventures of the fugitives."\* The author of the work, being interrogated on the subject by the chairman of the committee, testified to the delivery of the diary to Stanton, whereupon a subpoena *duces tecum* to Holt brought the hidden document before that body. Booth's farewell message, so far as himself was concerned, fell flat enough; but, concerning the woman whom his deed dragged to a felon's doom, its effect was widespread, profound and enduring. General Butler, the recent defender of military commissions before the Supreme Court, of all men in the

\* Baker's book, 508, and his testimony on Imp. Inv., 452-3.

world, became her champion. Bingham, on the floor of the House, bearing upon his brow the laurels won as special judge advocate, in an unlucky hour was provoked by a jocose remark of the gentleman from Massachusetts to hold "the hero of Fort Fisher *not taken*" up to ridicule as but a carpet-knight; thereby laying himself open to the following crushing retort: "The gentleman has had the bad taste to attack me for the reason that I could do no more injury to the enemies of my country. I agree to that. I did all I could, the best I could. . . . But the only victim of that gentleman's prowess that I know of was an innocent woman hung upon the scaffold, one Mrs. Surratt. And I can sustain the memory of Fort Fisher if he and his present associates can sustain him in shedding the blood of a woman tried by a military commission and convicted without sufficient evidence in my judgment." Bingham, in reply, protested that he had executed no person, had but acted as the advocate of the United States; and, then, in imperious tones, demanded by what right the member assailed "the tribunal of true and honorable men who found the facts upon their oath and pronounced the judgment. What does the gentleman know of the evidence in the case, and what does he care?"

This demand, a few days later, Butler took occasion to answer:

"I hold in my hand the evidence as reported under the gentleman's official sanction. . . . The statement I made the other day . . . was the result of a careful examination of

the case for another and a different purpose, in the endeavor to ascertain who were concerned in fact in the great conspiracy to assassinate President Lincoln. The gentleman says he was 'the advocate of the United States only.' Sir, he makes a wide mistake as to his official position. He was the special judge advocate whose duty it was to protect the rights of the prisoner as well as the rights of the United States, and to sum up the evidence and state the law as would a judge on the bench. Certainly, it was his duty to present to the commission all the evidence bearing upon the case. Now there was a piece of evidence within the knowledge of the special judge advocate . . . which he did not produce on this most momentous trial."

And, alluding to the appearance of the diary before the committee, he continued:

"Now, what I want to know is this: . . . If it was good judgment on the part of the gentlemen prosecuting the assassins . . . to put in evidence the tobacco pipe, spur and compass found in Booth's pocket, why was not the diary, in his own handwriting and found in the same pocket, put in evidence . . . ? And, therefore, I did not charge the able and gallant soldiers who sat on that court with having done any wrong. They did not see the diary, they did not know of the diary. If they had they might have given a different finding upon the matter of this great conspiracy. . . . I understand the theory to be that that evidence was not produced lest Booth's glorification of himself . . . should go before the country. I think that a lame excuse. If an assassin can glorify himself let him do so. . . . I believe that piece of evidence would have shown what the whole case, in my judgment, now shows; that up to a certain hour Booth contemplated capture and abduction, and that he afterward changed his purpose to

assassination. . . . Now what I find fault with in the judge advocate . . . is that in his very able and bitter argument against the prisoners, no notice is taken . . . of this change of purpose and brought to the attention of the men who composed that military tribunal. And if Mrs. Surratt did not know of this change of purpose there is no evidence that she knew in any way of the assassination, and ought not, in my judgment, to have been convicted of taking part in it. . . .

“Although in some aspects of the case it might not have been legal evidence, yet in all aspects it was moral evidence, carrying conviction to the moral sense. It is the dying declaration of a man, assassin though he be, who was speaking the truth, probably to himself, as between himself and his God.”

The general was not satisfied with proclaiming the innocence of Mrs. Surratt, but he took advantage of the occasion to fatten the delusion of the impeachers and insinuate the complicity of the President:

“That diary, as now produced, has eighteen pages cut out, the pages prior to the time when Abraham Lincoln was massacred, although the edges as yet show they had all been written over. Now, what I want to know, was that diary whole?” (Baker when on the stand was positive the leaves were in the book when he delivered it to Stanton.) “Who spoliated that book?” the gentleman demanded. “Who caused an innocent woman to be hung when he had in his pocket the diary which stated at least what was the idea and purpose of the main conspirator?”

And, quoting from memory the sentence expressing Booth’s half-formed purpose to return to Washington and clear himself, he vociferated:

"How clear himself? By disclosing his accomplices? Who were they? . . . If we had only the advantage of all the testimony, we might have been able . . . to find who, indeed, were all the accomplices of Booth; to find who it was who changed Booth's purpose from capture to assassination; who it was that could profit by assassination who could not profit by capture and abduction; who it was expected would succeed to Lincoln, if the knife made a vacancy."\*

So lasting was the sensation caused by this encounter that, when the Congress convened for the July session, the House, on Butler's motion, authorized a special committee to investigate "all the facts and circumstances connected with the assassination tending to show who were the persons engaged in the conspiracy," many of whom, it was declared, "holding high positions of power and authority because of the civil war" acted "through inferior persons who were their tools and instruments." Furthermore, the committee was empowered to report an act of grace and amnesty to every person contributing evidence "to bring to light the facts"; thereby reopening the door for a second swarm of professional witnesses ready to place their oaths at the service of their country. To this body, by order of the House, all the testimony taken by the judiciary committee concerning the assassination was turned over, including a memorandum of the evidence Conover promised to procure as the price of his pardon. This convicted felon "as an earnest" of what he could do in this line, caused to be brought to Washington two persons prepared to swear to the

\* *Globe*, 1st Sess. 40th Cong., 263, 363-4.

contents of his memorandum, who, after being examined by Ashley and Butler, would have given their testimony, had not Conover refused to allow them to do so until after his prison doors were opened.\*

But the expiring effort of this committee was the despatch of an emissary to the Dry Tortugas to extort from the four prisoners on that barren isle statements implicating the officer whose warrant sent them there. For two years and over, Arnold, O'Laughlin, Spangler and Mudd had been kept in close confinement in the cells of Fort Jefferson. In August, 1867, the yellow fever broke out in the garrison, carrying off, among its first victims, the surgeon in charge. In this emergency, Dr. Mudd volunteered his services, devoting his energies and his professional skill to the relief of the sick and dying. In September, O'Laughlin succumbed to the epidemic, adjuring the doctor with his last breath to "tell his mother all," and whispering to Spangler a "goodby, Ned." Every non-commissioned officer who recovered signed a petition for the doctor's pardon, which for some reason never reached the President. At length, Mudd himself was stricken down and, in the absence of a physician, owed his life to the assiduous nursing of his two remaining comrades in misery. Such was the situation at the fort when the agent of the committee arrived. Giving notice that his visit must be kept secret, he produced letters from General Butler authorizing him to obtain

\* *Globe*, *id.* 515-7. For members of committee, see p. 522; *Impeachment Inv.*, 1204, 1194 *et seq.*, 1198-9; *Washington Chronicle*, August 10, 1867.

the statements of the three survivors. One by one they were summoned by the commanding officer into his presence and forced to submit to examination. Each was told that if he would implicate others in the assassination, he would be released from imprisonment and carried to Washington as a witness. Statements were obtained from them; but, apparently, not of a tenor that suited the agent or his principals, for the former left the post "much disappointed"; and nothing was ever heard of the papers he took with him.\* Even while he was about his nefarious mission, the defeat of the first impeachment extinguished the body that was fitly named an assassination committee; and after his return to Washington the removal of Stanton furnished the majority in Congress a far more tenable ground of attack than the removal of Lincoln. The absurd delusion, however, did not die with the committee. Not even the defeat of the final impeachment, on which Bingham was as violent in denigration of Johnson as he had been loud in his praise on the Conspiracy Trial, could kill it. It lingered here and there—the fixed idea of morbid brains—for six long years, when, in an elaborate essay to establish its truth, ex-senator Foote laid it to rest forever.

To this ignominious end was brought the "Great Conspiracy" which Stanton heralded to the world on the morning after the assassination. It accomplished nothing in furtherance of the purpose for which it was

\* Letter from Dr. Mudd in his *Life* by daughter (above cited), p. 296. "The Lincoln Plot," by Arnold, published in *Baltimore Amer.*, 1902, and *N. Y. Sun*, same year.

fabricated. Jefferson Davis—all hope of trying him by military commission being abandoned—was surrendered by the military to the civil authorities and admitted to bail on an indictment for treason; Clay had been released on parole a year before; Thompson and Sanders and Tucker and Cleary were roaming at will, forgotten if not forgiven. The sole result of its blind advocacy on the part of the prosecuting officers was to sweep within the purview of the judgment of the court the woman who stood at the bar with Payne, Atzerodt and Herold; and to banish to a prison on the Florida reefs four men, all of whom, but the one who died of yellow fever, were about to be pardoned.\*

\* Jefferson Davis' surrender, May 13, 1865, see *Century* for Feb., 1887; Clay's release, Imp. Inv., 428, 550; Mudd pardoned, Feb., 1868; Spangler and Arnold, March, 1869. See *Life of Mudd, ut sup.*

## CHAPTER VIII

### THE TRIAL OF JOHN H. SURRETT

ONE conspirator remained—a conspirator whom the course of events seemed conspiring to force upon a government anxious to get rid of him.

John Harrison Surratt, it will be remembered, passed through Washington on the night of April 3rd, 1865, on his way from Richmond to Canada; reached Montreal on the sixth and, remaining there until the twelfth, took the afternoon train going south. His destination was Elmira, a town in the interior of New York state, whither, to reconnoitre the military prison there, he was sent by the Confederate general Edwin G. Lee, whom he chanced to meet in Montreal. On the thirteenth, he registered at the Brainard House under the pseudonym of “John Harrison”; the next day finished the business which brought him to the place; and, that night, at the hour when Booth and Payne set about their bloody work, three hundred miles away, retired to his bed. He woke in the morning to find the inhabitants horror-stricken at the news of the assassination of the President; and it was not until he had sent a telegram to Booth in New York to ascertain if the actor was in that city, that he learned his late colleague in the plot to capture was identified as the assassin. Unconscious as yet of his own danger, he took the train for Canandaigua, a village between fifty and sixty miles distant, arriving there the same

evening; and, no train leaving until Monday, he was obliged to stay over, registering at the Webster House under the same name. On Monday, seeing in a newspaper John H. Surratt mentioned as the assassin of Seward, he lost no time in crossing the border, reaching his hotel in Montreal on Tuesday afternoon, the eighteenth, remaining there only long enough to get his clothes, and vanishing beyond pursuit.

While his mother was undergoing the torture of her trial, he lay concealed in the house of a friendly priest of a country parish some forty miles from Montreal; hearing no news from Washington until too late to attempt to save her life by the sacrifice of his own. After the dreadful catastrophe, he returned to the city and was hidden there until the fifteenth of September when, under the name of McCarty and in disguise, he was taken by boat to Quebec and put in charge of the surgeon of a steamer about to start for Liverpool. The reward of \$25,000, still on his head, made him a valuable asset to his custodian, who, as soon as the vessel reached its destination, hastened to reveal the presence of his prize to the vice-consul of the United States. This intelligence, together with certain particulars said to have been confided to the informer by the fugitive during the voyage, was transmitted to Minister Adams at London and to Secretary Seward at Washington, to be met by these officials with the rebuff that it was not thought advisable to take any steps in the matter for the present. The surgeon, disappointed at the result of his first effort, sought out Surratt and engaged to deliver a letter to a mutual friend at Mon-

treal, requesting a remittance of cash;—a trust which he discharged at the end of his return voyage, and, then, made a second effort to realize the fruit of his discovery by betraying the situation to the American consul at the last-named city. That officer telegraphed the facts to Washington, suggesting that an agent be sent out with the steamer about to sail, to arrest Surratt, who, on his way to Rome, was still at Liverpool awaiting the supply of funds. Moreover, the telegram was followed by a despatch giving the particulars of the interview with the surgeon who, by this time, as he told the consul, “regarded Surratt as a desperate wretch and an enemy to society.”

These repeated calls to action, to the surprise of every one cognizant of the facts, failed to stir the managers of the Bureau—recently so remarkable for their vigilance. The secretary of war and the judge advocate put their heads together, but did nothing. Seward went so far as to request the attorney general to procure an indictment with a view to extradition, but the request was not acted upon. Nay, the only step taken was in an opposite direction—the reward for the arrest of the fugitive was publicly withdrawn, and that interesting personage traveled unhindered from Liverpool to London, from London to Paris and Paris to Rome, where, still unmolested, he passed the winter at the English college. In the early spring, under the name of —— Watson, he enlisted in the Papal Zouaves and was sent on garrison duty to a post near the Neapolitan frontier, forty miles from the capital. There he might have remained unknown until the

expiration of his term of service, had it not been for the extraordinary coincidence that there was a Zouave in another company, close by, whose acquaintance Surratt, with his chum Wiechmann, had made three years before in a Maryland village. This recruit, Henry B. Ste. Marie by name, also hailed from America. A Canadian by birth, he had been engaged as a teacher in a Washington college on Wiechmann's recommendation; afterwards joined the Union army; was taken a prisoner of war to Richmond, obtained his liberty and made his way oversea back to his Canadian home just in time to hear of the assassination. Alive to the prospect of gaining a share of the reward offered by the government, he proceeded to lodge with the American consul at Montreal the particulars he professed to know concerning Surratt and Wiechmann, each of whom, as he said, was as guilty as the other. Nothing resulted from his revelation of sufficient importance to detain him in his native province, for the next we hear of him he is serving in Italy as a soldier of the Pope; exceedingly anxious, however, as he expresses himself, "to revisit his native land and the gray hair of his father and mother." In this state of mind, the appearance of his acquaintance, as a comrade in arms in a far country, seemed a veritable god-send; and as soon as he can gain leave of absence, he hastens to Rome and astounds the American minister in that city with the tidings that the survivor of the murderers of Abraham Lincoln is at present in the service of the Papal States. At once, the minister—Rufus King—sends word to his government; and, while waiting for

instructions, is plied with letter upon letter from the border, in which the impatient informer urges haste, pleads his own peril from the friends of the man he is betraying, his need of money and his longing to do justice to "the ever lamented memory of President Lincoln." The authoritative reminder that so conspicuous a state-criminal was again within reach of capture, coming at a moment when the opponents of the President had secured a two-thirds majority in both houses of Congress, could not be treated with the indifference manifested towards a similar announcement the previous fall. The minister at Rome was instructed to obtain from Ste. Marie a statement of Surratt's confession to him; and after that envoy had sent one unverified which for that reason proved unsatisfactory, he at last succeeded in obtaining another, signed, sealed and sworn to before the minister himself, which concluded as follows: "This is the exact truth of what I know about Surratt. More I could not learn, being afraid to awaken his suspicions. And further I do not say."

Strange to say, when armed with the verified document they had declared indispensable, the authorities neglected to make any use of it. Stanton and Holt fell back upon the rule that the extradition of a fugitive from justice was an affair of the Department of State, and Seward was too busy in his preparations to accompany the President on his famous tour through the North and West to take up the matter. But as fate would have it, on the very eve of his departure there came a despatch from King announcing that if

the American government desired the surrender of the fugitive, Cardinal Antonelli intimated that the lack of an extradition treaty would not stand in the way. Even this unprecedented overture failed to have any immediate effect; and it was not until Seward's return in October that King was instructed to put the question to the papal prime minister whether Surratt would be surrendered on presentation of an authenticated indictment. The cardinal, for his part, made no delay; not only did he answer in the affirmative but, without waiting for any formal demand, he ordered the arrest; and, in consequence, on the second day of November, 1866, "Zouave Watson" was metamorphosed from a soldier into a prisoner of state. Early next morning, as, "surrounded by six men as guards," he was starting for "the military prison at Rome," he "plunged down into a ravine, more than a hundred feet deep, which defended the prison" and succeeded in making his escape across the frontier. On the seventeenth, he sailed from Naples in a British steamer bound for Alexandria, which port, after stopping at Malta, he reached on the twenty-seventh, and, the American consul there having been apprized of his coming, he was finally intercepted and held to await the arrival of a United States vessel to carry him to this country.\*

Thus it was that, after the lapse of more than a year since the authorities were informed of his whereabouts, this notorious accomplice of Booth was fairly

\* For these particulars, see letters and testimony transmitted to H. R. with Report of Sec. of State, Dec. 16, 1866; Ex. Doe. No. 9, 39th Cong., 2d Sess.

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thrust upon their hands; and against whom, now he was at length in their power, they seemed at a loss what course to pursue. The leading radicals in Congress, whose fiery zeal had not yet had time to cool, could account for such lukewarmness on no other theory than that the traitor sitting in the seat of Lincoln shrank from any further search into the circumstances attending the assassination; and, accordingly, the House ordered the judiciary committee to find out the causes of such flagrant nonfeasance. And it is worthy of note that, from one point of view, the radicals were actually upon the right scent. The truth was that the administration had been purposely delinquent; not so far as the President individually was concerned, who, as the evidence subsequently showed, was not responsible for the delay; but in the persons of those very functionaries who were most active against this particular member of the band before the military commission. Realizing that the day of such subservient tribunals was over, and that their cherished hypothesis of a Great Conspiracy emanating from the Confederate government was no longer tenable, they did indeed shrink from reviewing before a jury of the District of Columbia the trial of Mrs. Surratt in the person of her son. Moreover, aside from this general consideration which partook more or less of a sentimental character, they were haunted by the uncertainty thrown on the whereabouts of Surratt on the night of the assassination by the statements of the two informers so hot in pursuit of the reward on his head. McMillan, the surgeon of the ship that

carried the fugitive oversea, made it probable that he was in Elmira, and an investigation provoked by this statement showed that he was, as matter of fact, in that town; while Ste. Marie placed him in New York "prepared to fly when the deed was done."\*

There was no help for it, however; the unwelcome exigency had to be met. The United States steam corvette, *Swatara*, touched at Alexandria on the twenty-first of December, 1866, and, thence, with its one solitary iron-bound captive for cargo, ploughed its slow way through the Mediterranean and across the Atlantic; passing between the capes of the Chesapeake on the eighteenth of February and, three days after, casting anchor abreast of the Washington Navy Yard. There, in sight of the prison in which his mother was tried and condemned and under which she lay buried, Surratt, by order of the Secretary of State, was delivered into the hands of the civil authorities; the War Office relinquishing without a remonstrance the charge of the prosecution. Two weeks before, the grand jury of the District had found an indictment for murder, and the district attorney at once began to prepare for a trial which bade fair to become historic.

At such a juncture the Federal administration could do no less than back the district attorney; and the Bureau of Military Justice, despite its misgivings, girded up its mighty loins for the conflict. There being no allegation in the indictment of Confederate complicity, its spies and detectives, whose hunting grounds

\* See their testimony in Report cited above.

had been in Canada and Richmond, were *functus officio* as witnesses; but those of them who were out of jail, and their chief, who was in jail, placed their skill and experience at the service of the prosecution. Of course, such an outrage as the making evidence of the horrors of Libby and Andersonville was unthought of; but no person sworn on behalf of the government on the other trial, whose testimony had the remotest bearing on the guilt of the defendant, not only, but on the guilt of his mother, of Booth, Payne, Atzerodt and Herold, and who was within reach, escaped being summoned, subjected to discipline and put upon the stand. Additional witnesses—some drawn by the hope of reward, some caught by the craze to take part in so celebrated a cause, and many whom even the argus-eyed subpoena-servers of the Bureau had overlooked on the former occasion, were gathered in from all points of the compass. Edwards Pierrepont, a prominent member of the New York bar, distinguished for the plausibility with which he could conceal the weak spots of a popular but shaky case,\* was retained for the United States; and a judge was found to preside who, as was shown by his course during the trial, was (to employ a phrase much in vogue in that day) “organized to convict.” A jury—regarded by the advocates of courts-martial and military commissions as an insurmountable obstruction to the course of justice in such a vicinity as the District of Columbia—was obtained, every single member

\* Subsequently attorney general under Grant and sent as minister to Great Britain.

of which was agreed to by both sides; the district attorney speaking of the panel "as representatives of the wealth, the intelligence and the commercial and business character of the community; gentlemen against whose character there cannot be a whisper of suspicion."

The trial opened on the tenth of June, 1867, and the first week was taken up in arguing a challenge by the United States to the array, which, if successful, would have postponed the cause until the next fall; and by the examination of the jurors. It was during this interval that Pierrepont saw fit to give notice that "the public mind would be set right with regard to a great many subjects about which there have been such active and numerous reports and innuendoes," among the rest, "that the United States dared not bring forward the diary found upon the murderer of the President because that diary would prove things they did not want to have known."

When, on Monday, the seventeenth, the assistant district attorney was about to open the case, the scene in the court room afforded a speaking contrast to the corresponding scene before the military commission. The court was not held within the walls of a prison guarded at all points by soldiers; and the unpretentious court house, standing in its peaceful square, with its doors and windows open, when compared with the Old Penitentiary pervaded by scarcely suppressed passion and undisguised thirst for blood, seemed the very sanctuary of even-handed justice. As the prisoner entered and advanced to the bar, no clank of fetters

jarred upon the ear; and, as he sat at his ease by the side of his counsel like a citizen the law presumes to be innocent until proved guilty, the memory of that group of culprits loaded down with irons as they crouched before their imperious doomsmen served to consecrate anew the benignity of the common law of peace in contradistinction to the barbarity of the common law of war. One overmastering impression there was, moreover, striking awe into the heart of the most indifferent spectator. All felt that the woman who had suffered the extreme penalty of the law two years before was again on trial with her son, and, as the defendant stood in the flesh with upraised hand to answer to the indictment, the ghost of his mother seemed to hover above his head, echoing with shadowy lips the plea of not guilty, with the feeble repetition of which she had tottered to the scaffold.

The prosecution was fully alive to the fearful alternative with which it was confronted. Though a conviction, it was likely, would condone the judgment of the military commission notwithstanding its legal invalidity, an acquittal or even a failure to convict would brand the execution of its sentence upon the mother of the defendant as nothing short of judicial murder under military rule. In the presence of such a tremendous issue—as inexorable as the riddle of the sphinx—the prosecuting officers dared not forego a single branch or phase of their case, no matter how incompatible, one with another, they might have become. For instance, the testimony taken before the commission implicating Surratt with the conspirators before

that tribunal tended to demonstrate the existence of a plot to capture as contradistinguished from a plot to kill; yet, although the names of Arnold, O'Laughlin, Spangler and Mudd did not appear in the present indictment and the prosecution was pledged to produce the diary of Booth, they refused to recognize the existence of the former plot and followed the judge advocates in blending the two—a course rendered much more difficult, if not wholly out of question, by the explosion of the charge of complicity on the part of the Confederate government. And in this course they stubbornly persisted after they had come to the determination, despite of convincing evidence to the contrary in their own possession, to hinge their whole case upon the presence of the prisoner in Washington on the fatal night. The blending of the two plots was not necessary to convict a conspirator like Payne or Atzerodt whose presence on the scene of action was undisputed; this device was originally resorted to bring within the compass of the charge parties at a distance, especially the authorities at Richmond. The presence of Surratt in Washington once established, to resort to the tactics of the Bureau in the matter of the Great Conspiracy was a mere work of supererogation. The truth is that, oppressed by the magnitude of their task and the alarming uncertainty of the result, they had not sufficient confidence in the strength of either branch of their case to dispense with the aid of the other. Both must be utilized for all they were worth. One might be sufficient for the conviction of

the son but the other was necessary to uphold the conviction of the mother.

Accordingly, they lavished their resources, exhausted their energies and distracted their aim by pushing to the front two independent lines of proof, the substantiation of either of which was all-sufficient for every legitimate purpose; and, in consequence, like a person attempting to ride two horses at once, they fell between the two. The assistant district attorney stated in his opening address: "On the Monday before the assassination, Surratt received a summons from his co-conspirator, Booth, requiring his immediate presence in this city. In obedience to that preconcerted signal he at once left Canada and arrived here on the thirteenth. By numerous, I had almost said a multitude of witnesses, we shall make the proof to be as clear as the noon-day sun, and as convincing as the axioms of truth, that he was here during the day of that fatal Friday, as well as present at the theatre at night. We shall show him to you on Pennsylvania Avenue booted and spurred, awaiting the arrival of the fatal moment. We shall show him in conference with Herold in the evening; we shall show him purchasing a contrivance for disguise an hour or two before the murder." Such being the case, there was, surely, no necessity for another attempt to prove a series of allegations which the Conspiracy Trial left doubtful and subsequent developments showed to be unmaintainable; allegations which the assistant district attorney restated as follows: "The butchery that ensued was the ripe result of a long-premediated plot,

in which the prisoner was the chief conspirator"; "he made his home in this city the rendezvous for the tools and agents in what he called his 'bloody work'; and his hand provided . . . the very weapons . . . one of which fell from Booth's death-grip at the moment of his capture." As a matter of fact, the diary they themselves put in evidence pointed unmistakably to the "six months' work to capture" and the sudden inception of the design "to kill"; and their star-witness Wiechmann placed the collapse of the former at least three weeks before the development of the latter. Yet they strenuously contended that the work to capture and the design to kill were but parts of one conspiracy set on foot in the summer of 1863. Beside the mass of testimony adduced on the other trial, they further enriched the literature of the subject by bringing forward two witnesses:—one a druggist in whose employ during the summer of the last-mentioned year, Herold charged the President on the books of the shop with "a small vial of castor oil," to show that "poison" was then contemplated;\* the other, a woman who in April, 1864, overheard three men talking on a street corner in Washington about killing the President with "a telescopic rifle."† Two of the men she fancied she recognized among the prisoners at the Conspiracy Trial, though she did not report them to the authorities, and the third she had since become convinced was John Wilkes Booth whom she had seen on the stage. The "Selby" letter was again made use of, this time, not as written to Booth by some

\* See Note III to Chap. I in Appendix; S. T., 510, 517.

† S. T., 365.

person unknown, but as written *by* Booth in a disguised hand to lure Payne from that imaginary being —his broken-hearted wife.\* They followed Booth and Surratt to the capitol on the evening of the second inauguration; Surratt riding during the next day in the rear of the procession, and both of them at Mrs. Surratt's in the evening; but there was no attempt to prove that Booth, in trying to force his way through the crowd in the rotunda on that occasion, was arrested; the policeman who, it was said, was the hero of such an achievement and promoted for his heroism, not being produced as a witness.†

It is not our purpose to dwell upon this branch of the case, which in one sense has grown obsolete; but something must be said upon that portion of the testimony on this trial which bore directly upon Mrs. Surratt. Of course, the two witnesses who turned state's-evidence reappeared. Lloyd manifested a superstitious reluctance to speak of the woman whom he had been instrumental in sending to a felon's grave; but he was forced to repeat his former testimony;—his cross-examination, however, bringing into stronger light the gross intoxication that rendered his evidence unreliable at the points where it was calculated to be most deadly. Wiechmann came also; a spruce, dapper figure, careful to remind the audience that his name originally was spelled "Wie" instead of "Wei," as the reporters would have it at the other trial and as he thought proper to spell it since. After his perfor-

\* See Chap. I, Note III; S. T., 365, 1305-6.

† Note to Chap. II in Appendix; S. T., 379.

mance on that occasion, which in some respects was not satisfactory to the judge advocate, and before the execution of the condemned, he made overtures to the friends of his dead benefactress, pleading duress; but, being met with loathing by every mourner of his victim, he turned back to the government, his position under which he had forfeited. On the eleventh day of August, 1865, he sent to Colonel Burnett, at Cincinnati, his own affidavit; containing, as he informs that officer, "facts which have come to my knowledge since the rendition of my testimony." In this paper, he puts into the mouth of the woman, executed but little over a month ago, remarks made in the confidence of domestic intercourse indicative of her sympathy with the Southern cause which she had every reason to believe her favorite boarder shared, and embellishes his former narrative of their drive to Surrattsville on the fatal Friday with a few poisonous details; among the rest, identifying the caller on their return, whose footsteps, in his former testimony, he said he heard overhead, but whom he did not see, as Booth.\* For this service he was rewarded by an appointment in the Philadelphia customhouse, which, owing to the rupture between President and Congress, he enjoyed but little over a year. When the extradition of his former room-mate made another trial inevitable, he began preparing himself to face an ordeal where *ex parte* affidavits would not pass muster. The official report of the "Trial of the Assassins," he carefully studied; copied his own testimony; collated it with his affidavit;

\* Note I to this chapter in Appendix.

and produced a revised version which he handed to the district attorney before going as a witness before the grand jury. After the indictment was found, believing, as he said, that his "character was at stake in this issue," intending to do all he could "to aid the prosecution," "hunted and prosecuted," as he charged he was, by the relatives and friends of his victim, he sat down to make another study of Pitman's book, comparing it with a Boston record of the trial, touching and retouching the revised version, correcting errors in dates, raising innuendoes into positive averments, straightening the logical sequences, and decorating the whole with a few damning details unheard of before.\*

For all his self-possession and careful study, the witness did not escape so easily as upon the former trial. Where third parties happened to be present, the defence was able to contradict him on several material points. His looseness in dates, though he strove hard to correct such discrepancies, was made apparent. His intense anxiety to help on a conviction as a vindication of his turning against the mother of the prisoner was painfully visible in his demeanor and audible in every word he spoke; and the more important of the details contained in his affidavit and those first disclosed in his present testimony were shown to be false.

One other circumstance which, as we have already stated, has been cited by writers on the subject ever since the Conspiracy Trial as strong evidence of the

\* Note II to chapter in Appendix.

guilt of Mrs. Surratt must be adverted to. Her non-recognition of Payne on the night of the arrest of that conspirator at her house was gone over in much more elaborate detail than on her own trial; a diagram of the hall, showing the relative positions of the parties to the scene being made a part of the evidence. The same witnesses were called—the two leaders of the expedition still vieing with each other in setting themselves right in the eyes of their superiors. Major Smith laid on the colors and deepened the shades of his dramatic recital before the military commission; and Colonel Morgan tried his utmost to tone down his point-blank contradictions of his rival on the same occasion. His efforts were vain, however; the sole result being a demonstration of the unreliability of the testimony of detective officers employed by the government in cases where large rewards are at stake and the government deeply interested in the establishment of its side of the issue. Moreover, as was pointed out on the former trial, there were subordinates present whose testimony might have cleared away the chaos, and not one of them was sworn.\*

Leaving this branch of the case, we come to what was after all the real gist of the contention on the Surratt Trial. Without satisfactory evidence that the prisoner was present in Washington on the night of the assassination, the prosecuting officers were aware that they could gain no hold on the jury. Indeed, nothing short of the certitude that there was no other

\* See Note III in Appendix to Chap. III.

way open leading to a conviction could have driven them to enter upon so hopeless an undertaking.

In the first place, that the prisoner was absent from the scene of the crime was clear from the evidence on the Conspiracy Trial, and at that date but a single witness could be ferreted out who testified that he saw Surratt at about three o'clock in the afternoon on Pennsylvania Avenue. Before this hour or after, not another human being had laid eyes on him; not an acquaintance, not an inmate of his household, not even Wiechmann, since the fourth of April. In the second place, as we have already intimated, they had in their possession strong affirmative testimony that on the thirteenth and fourteenth he was either far away in the interior of the state of New York, or, at the nearest, in its metropolitan city. Yet, they had the hardihood to instruct the assistant district attorney in opening the case to make the sweeping declaration quoted above. And the number of persons that they were able to corral, prepared to testify as they desired, is absolutely astounding. In addition to the single witness of the Conspiracy Trial, the district attorney called thirteen. Of these three were witnesses on the former trial:—Lee, sworn against Atzerodt; Cleaver, the liveryman at whose stables Booth and Surratt hired and kept horses; and Dye, sworn against Spangler; none of whom was interrogated anent Surratt nor volunteered mention of his presence. On the present occasion, however, Lee testified that, about three o'clock in the afternoon of the fourteenth, he passed a man on the avenue “whom he took to be Surratt”;

Cleaver, that, a little after four, he on horseback met Surratt on horseback and spoke to him; Dye was able to identify the stranger who, he swore in his former testimony, called out the hour in the front of the theatre, as Surratt, because as he said "that face" had appeared in his dreams for the past two years—"so exceedingly pale." Of the ten witnesses sworn for the first time, six were not positive. Cooper, a comrade of Dye's, not having seen the face that so haunted his companion, did little to corroborate him; Grillo, who kept a restaurant adjoining the theatre, "believed," but could not say he knew, the young man he saw at Willard's Hotel in the afternoon to be the prisoner; Coleman and Cushman, two officers of the Treasury, saw Booth on horseback at about six o'clock in the evening talking earnestly to a man standing on the sidewalk of Pennsylvania Avenue, who, the former swore, "looked like" the prisoner and the latter, that he "did not resemble" him "very much"; Heaton, a clerk in the land office, on first coming into the court room discovered "a very distinct resemblance" between the face of the prisoner and a face which had attracted his attention in front of the theatre more than two years before; and Ramsel, a soldier in the war, who, between four and five o'clock on the morning of Saturday, the fifteenth, saw a horseman riding towards the pickets on the Bladensburg road, whose back was in the opinion of the witness the back of the prisoner.

The four witnesses remaining, though none of them had ever seen Surratt until summoned for this trial,

were positive in their identification. Wood, a colored barber, testified that, at about nine o'clock in the morning, Booth came into the shop where the witness was at work, accompanied by three strangers, one of whom he—first trimming Booth's hair—shaved "clean all around his face with the exception of where the mustache was," and whom he now recognized as the prisoner. Rhodes, a mender of clocks, testified that, near noon, he strolled into Ford's theatre, walked up into the dress circle, noticed that the curtain was down, saw a man fitting a piece of wood to obstruct entrance from the audience into the passageway behind the private boxes, who told him that the President was to be there that night and they were busy "arranging it so that he won't be disturbed." This man, the witness had no doubt, was Surratt. Vanderpool, a New York lawyer, who served in the war and happened to be in Washington on the eventful day as a paroled prisoner, testified that in the afternoon he saw Booth and two or three others sitting at a round table in a hall on the avenue where were fifty or sixty persons listening to music and watching a woman dancing; and one of them was Surratt. These three witnesses, although like the rest of the community they must have followed the proceedings of the former trial with the deepest interest, first put themselves into communication with the authorities after the present trial had commenced. To this criticism, however, the fourth witness was not obnoxious. She was a colored servant of Mrs. Surratt's, first coming to her house in the month of March, 1865, after her son had gone to Rich-

mond. She was arrested, with the other inmates, and was subjected to an examination at General Augur's headquarters—her answers being taken down in writing. She now testified that between eight and nine o'clock on the Friday night in question, going into the dining room with a pot of tea, she saw a young man there whom Mrs. Surratt told her was her son John—a statement which she, also, swore she made on her examination just after her arrest.

One other witness there was, whose testimony took the shape of a confession of the prisoner. The two Canadians, who put the authorities on the track of the prisoner in Europe, had been haunting the capital for months; the liberal rewards pending being the governing motive of their zeal. McMillan, the surgeon of the steamer in which Surratt crossed the ocean, though doing all the damage to the prisoner in his power, could not, in view of his affidavit made before the American consul at Liverpool, venture to put words into the prisoner's mouth placing him in Washington. Ste. Marie, on the other hand, seemed to have forgotten the averment in his deposition that Surratt told him "he was in New York when the event took place"; the remembrance of which by the prosecuting officers may explain why, when the witness took the stand, they guided him as follows:

"Q. Did the prisoner tell you anything about his disguises? A. Yes, sir. I asked him how he got out of Washington; if he had a hard time in escaping. He said he had a very hard time.

"Q. How did he say he got out of Washington? A. He told me he left that night.

"Q. What night? A. The night of the assassination or the next morning, I am not positive."

The counsel for the prisoner not being aware of the affidavit, the witness escaped cross-examination.\*

A truly formidable array this; furnishing a striking illustration of the coercive power of a place in the service of the government over the mind of its holder, when questions, in which the government is deeply interested, are at stake, and of the magnetism a celebrated trial exerts over persons rabid for notoriety and persons on the watch for prey. But formidable as it was, the defence was able to meet it witness by witness. Lee was conclusively impeached; among a host of other witnesses, the provost-marshall, whose chief detective he once was, pronounced his reputation for truth and veracity bad. Cleaver, also, was impeached; and he acknowledged on the stand that, while lying in jail under a conviction for a shameful crime, he was persuaded by Conover to peach on the prisoner whom hitherto he was inclined to shield. The phantom of Dye's dream was dispelled by the introduction in the flesh of the very man who called out the hour. The friend Booth was seen earnestly talking to on the avenue was shown to be Matthews, his fellow-actor to whom he delivered the article to be given to the press. The scene in the dining room of the Surratt house when

\* See affidavit of Ste. Marie, Ex. Doc. No. 36, 40th Cong., 2 Sess. in report. Act for payment of his reward in Appendix to *Globe* of that association, p. 602.

Susan Ann Jackson first saw her mistress' son was proved to have occurred, not on the night of the fourteenth, but on the night of the third of April, when Surratt passed through Washington on his way from Richmond to Montreal; the change of date clearing up the mystery of the colored girl's nonproduction on the Conspiracy Trial. Wood, the barber, was shown to have been mistaken in identifying O'Laughlin as one of the parties coming into the shop, and it appeared that the man he shaved clean around could not have been the prisoner, who wore a goatee. Rhodes' strange story was shown to be a fable by proof that the door leading from the vestibule to the dress circle of the theatre was always kept locked in the daytime; that, at the hour the witness swore he entered, the curtain was up and a rehearsal going on, and that the fixing up of the private box did not begin until the rehearsal was over. Vanderpool's equally improbable tale was refuted by proof that there was no afternoon performance in the hall and no round table on the premises. The identifications of the other four witnesses were so indefinite as, in the opinion of the counsel for the defendant, to call for no explicit refutation.

By a marvellous coincidence, in which the trial seemed to abound,\* a handkerchief, marked "J. H. Surratt No. 2," which the prosecution proved was dropped in the railroad station at Burlington, presumably by the prisoner, on his flight from Washington, was proved to have been taken by mistake by Holahan, the boarder at the house in H Street, who

\* Note III to this chapter in Appendix.

with Wiechmann was drafted by the officers starting for Canada in pursuit of Surratt.

Such was the serious inroad made by the defence on the formidable array marshaled by the United States. But this by no means constituted the whole of the counter-attack. They established an alibi as conclusive as ever was interposed in a court of justice. That the counsel for the government, when it came to close quarters, were prepared, from evidence in their own possession, to concede that the prisoner was at Elmira the day before the assassination, was sedulously concealed during the presentation of their side of the case, and, of course, was undreamed of by the counsel for the defence. Guided by information secured from the prisoner, the Messrs. Bradley, his counsel, had set on foot a "careful, painstaking investigation extending over a period of many weeks," tracing his whereabouts from his departure from Montreal until his return, ascertaining the nature of his errand, interviewing the persons he had met, visiting the hotels he had stopped at; and they were rewarded by the verification of their client's story in every particular. The Confederate general Edwin G. Lee, who happened to be in Montreal at the date in question on sick furlough, was put upon the stand to prove the object of the prisoner's errand to Elmira and that he made a report to the witness on his return; but the testimony was excluded. His presence in that town, however, was proved by four residents of unblemished character and exceptional loyalty, and wholly disinterested; two of them testifying that they saw and conversed with

him, on either the thirteenth or the fourteenth of April, 1865, in the afternoon; the third, that he saw and conversed with him on both the thirteenth and fourteenth; and the fourth, that he held a protracted interview with him on the morning of the fifteenth, at about nine o'clock, just after the news of the death of the President arrived. Their identification was positive and circumstantial, even to the Garibaldi jacket the prisoner wore, which, it was proved, was made for him by a tailor in Montreal just before he started on his trip. The register of the Brainard House of the date in question, though searched for high and low, could not be found; but the counsel, at the last moment, struck the track of a "man upon crutches," whom their client told them he had conversed with at that hotel; and summoned him by telegram from New York. The man came and testified that, being in Elmira on the fourteenth in search of a witness in his suit for injuries inflicted by an accident on the Erie Railroad, he saw and conversed with the prisoner at the Brainard House; but the reputation of this witness for truth and veracity was seriously impeached, and the defendant's counsel contented themselves with pointing out the absence of any conceivable motive for this stranger to commit perjury. They had somewhat better luck with the register of the Webster House at Canandaigua, where Surratt stopped on his way back, which they found and produced in court. Under the date of Saturday, April 15th, 1865, appeared the name of "John Harrison," proved to be in the handwriting of the prisoner. But the book having been out of use

since the end of that year, and the defence being unable to show the presence of the prisoner when the entry was made, the judge excluded the evidence with the remark: "The name could as well have been written by him in Canada, or Rome, or Egypt, as in Canandaigua. The book has been at the mercy of anybody for more than two years. It could have gone to Canada and back a hundred times; or the prisoner, during his stay there in Canada, could have gone to the book just as often."<sup>\*\*</sup>

Nevertheless, unfortunate as they were with respect to the two registers, the admission of either of which would have settled the question, the testimony actually admitted was strong enough to force the counsel on the other side to play a card which hitherto they had held up their sleeve in view of this very exigency. Their direct testimony left it to be inferred that Surratt traveled from Montreal straight through by the usual route to Washington. But, when testimony for the defendant which they could not contradict and knew to be in accordance with the facts, made it clear that he deviated so far as to fetch up at Elmira, they seized upon the alternative date given by two of the witnesses for the defence, magnanimously conceded his presence in Elmira on the morning of Thursday, the thirteenth, and undertook the herculean labor of transporting him over the three hundred miles between Elmira and Washington within twenty-four hours.

In the execution of this flank movement, however, they encountered obstacles that in an ordinary case

\* See Note IV to this chapter in Appendix.

would have been at once pronounced insurmountable. In the first place, they were obliged to do away with the testimony of two other witnesses for the defence of equal credibility, one of whom was positive that he met the defendant on the fourteenth as well as the thirteenth, and the other that he met him on the fifteenth; and this they did by insisting that the former was mistaken as to the fourteenth and by ignoring the evidence of the latter altogether. In the next place, they themselves had proved that the prisoner left Montreal on the twelfth by the three o'clock New York train, and it was uncontroverted that a passenger by that train could not have reached Elmira before the evening of the thirteenth (unless he had been a "bird," as Bradley said); an hour so late that it was physically impossible to get to Washington by the next morning. This difficulty the senior counsel for the United States met in characteristic fashion. He astonished every hearer by pointing out that his own witness, on testifying that the prisoner left Montreal by the three o'clock train, omitted to specify whether it was three o'clock A.M. or three o'clock P.M.—supplementing this obvious afterthought by the following declaration which may serve to show the reason for its employment: "We have never taken any pains to overcome this physical impossibility because we cared nothing as to how he got to Elmira. . . . The fact exists that he got to Elmira, and, therefore, the 'physical impossibility' is out of the way so far as that is concerned. He could easily have got there by a special train." The special train, which they merely guessed at in this

instance, they took extraordinary pains to prove in order to overcome another physical impossibility; namely to get the prisoner (not to Elmira but) from Elmira, where they admitted he was on the morning of the thirteenth, to Washington on the morning of the next day. "Our business," said Pierrepont, "was to bring him to Washington and that we have done"; that is, they did it in the following manner. The regular train out of Elmira, at 8 o'clock A.M., not being available for their purpose, they proved that a single car, which had brought the superintendent of the road from Williamsport, left Elmira on its return between ten and eleven of that day and overtook the passenger train at Williamsport at half-past twelve; and, although the conductor took up no tickets and saw no passenger, the counsel asked the jury to presume that the prisoner stole a ride on this extra. Having by this clumsy method got him seventy-eight miles on his journey, they were met by the embarrassing circumstance that the regular train laid over until half-past nine in the evening and did not reach Sunbury, forty miles farther on, until after midnight. From Sunbury, a train ordinarily left for Baltimore fifteen minutes later, arriving at its destination at 7:25 Friday morning; and, from Baltimore, a train left at 8:50 A.M. and carried its passengers to Washington by 10:25 A.M. This, it should be borne in mind, was by the regular mode of travel. Unfortunately for the prosecution, however, travel at the date in question was seriously impeded; the railroad bridge over the Susquehanna at Williamsport having been

carried away by a freshet, so that passengers had to be taken across by a rope ferry, and the railroad between Williamsport and Sunbury torn up for miles and blocked at intervals by construction trains running to and fro. At this critical juncture, the fine hand of the Bureau of Military Justice becomes plainly visible. Montgomery, who played Bedloe to the Titus Oates of Conover on the Conspiracy Trial, was sent on mission *in partibus* and returned with two witnesses in tow; one, the trainmaster at Williamsport and the other the ferryman, neither of whom had been confronted with the prisoner until the witness entered the court room on the last days of the trial. The former testified that he remembered a person on the thirteenth (over two years ago), who seemed very anxious to get through, inquiring of him about the trains; and, the prisoner standing up, he swore he could not be positive but he believed him to be the man. The latter testified that, on the same day, he ferried a passenger over the river and, the prisoner standing up, he swore that to the best of his belief that was the man. Having thus got him over the river in the temporary absence of the bridge, they got him over the broken condition of the road by asking the jury to take for granted that the prisoner caught rides on the construction trains and got to Sunbury in time for the train to Baltimore, reaching Washington at 10:25 A.M. on the Friday of the assassination.

This elaborate chain of proof, with so many intermediate links missing, failed, it will be perceived, to meet the conditions of the problem both at the begin-

ning and at the end. The two witnesses, the irrefragibility of whose testimony forced the concession of the prisoner's presence in Elmira, although they left the alternative of the thirteenth as the precise day, fixed unequivocally the hour at about noon. Consequently, the superintendent's car, leaving between ten and eleven, was, as a vehicle of travel, no more available for the purpose of the prosecution than the regular train leaving at eight. Again, at Washington, the barber fixed the hour at which he shaved the prisoner at "near about nine o'clock"; whereas a passenger alighting at the depot at 10:25 A.M. could hardly reach the shop on Pennsylvania Avenue much before eleven. Thus, the counsel started the prisoner at an hour too early to fit the evidence, and, after asking the jury to infer his presence on a private car and on construction trains, that, as a rule, take no passengers and, if they do, the passenger is sure of unusual notice, they landed him too late at the end. The discrepancy at the beginning, Pierrepont ignored as too trivial for notice; that at the end he brushed aside as follows: "We have now got the prisoner here at 10:25 and are on the road to the barber's. I now turn to the barber's testimony. . . . It is not of the slightest consequence whether he should think it was somewhere about nine o'clock or somewhere about ten o'clock. It was undoubtedly somewhere about ten o'clock, or a little after. . . . The witness did not attempt to fix the time; he did not undertake to fix it at all."

It was thus they brought the "Beelzebub" of the conspiracy, as the district attorney baptized Surratt,

upon the scene of action. And, after all the stress and strain to get him there, they found no part for him to play. He goes not near his own house. His mother and his college chum prepare to drive to Surrattsville, and, as they are about to start, the "Satan" of the conspiracy appears; all three in utter ignorance of his arrival. At the final council, Booth distributes the divers rôles in the impending tragedy; the slaughter of the Secretary of State is assigned to Payne, the murder of the Vice President is thrust upon the shrinking Atzerodt; even the insignificant Herold is at least to attend the leader in his flight. But the second in command comes not. His name is not written among the "men who love their country better than gold or life." Plunging across more than a hundred leagues of country, breasting floods and broken rails, without pause day or night, in obedience to the summons of his chief, he shows his pale face to a distracted sergeant and then vanishes over the northern horizon.

The trial dragged its slow length along until the twenty-second of July\* when District Attorney Carriington addressed the jury. Richard T. Merrick, the junior counsel of the defendant followed, creating a profound sensation by his impassioned vindication of Mrs. Surratt. Joseph H. Bradley, the senior counsel, in the course of his address which ensued, gave utterance to his foreboding that this was the last time he should ever address a Washington jury; which turned out to be true, as, at the conclusion of the case, he was

\* Note V to this chapter in Appendix.

disbarred by an order of the judge.\* The aged lawyer, overburdened, as he explained, with other business, unfit to undergo the wear and tear of such a trial, knowing that neither the prisoner nor his relatives were able to recompense him for his services or even furnish funds for the necessary disbursements, had been very reluctant to engage. "But," he continued, "if you had seen her who came to me, you could not have done otherwise. She did not weep; not a tear fell from her eyes. . . . Two years of long continued suffering had wasted that fountain. The eye once bright in her was dim, the countenance depressed. To be sure, it was lighted up with the hope that hereafter she might one day again see her blessed mother. Yet I refused. I refused until my two younger brothers undertook to take the laboring part of the case." His speech, besides, was noteworthy, on account of the positive charge he made, founded on communications received from William P. Wood, chief detective of the treasury, that the government knew before the indictment was found that Surratt was in Elmira on the day of the assassination.

On Saturday, the third of August, Edwards Pierrepont began the closing argument for the United States —a labored effort rendered intolerably tedious by copious readings of the testimony, decorated with lengthy quotations from the Bible and suffused throughout with a pious unction. This distinguished advocate held that the claim on the part of the defence that the murder of a President was a crime of no

\* Note VI to this chapter in Appendix.

higher grade than the murder of a private citizen was not only "not the doctrine of a statesman, not the doctrine of the Bible," but, also, was "not the doctrine of the law," declaring that "this was the first time in the history of this country when an opportunity ever has occurred to announce this great legal truth"; and, turning to the judge with the exclamation, "Your honor cannot escape it; and the country will call upon you, and ask you not to escape it; and they will hold you responsible if you dare attempt to escape it." Thus did he admonish the court. To the jury, his admonition was of a different tenor. He related an incident on the trial of a man for murder, at which he was present as a spectator. The jury had been out all night deliberating on its verdict, and, when the court convened in the morning, from the jury room was "heard the solemn voice of prayer." A devout man who feared God, sitting by the counsel, said, "That jury will agree." And, sure enough, "the jury arose from their bended knees; they walked into the court room and said 'He is guilty.' Gentlemen, if there is a man of you who is in doubt in this case, or any number of you, and you will take this test, it is all I ask."

Wednesday, the seventh, was made memorable by the charge of the judge. A Delaware Unionist, promoted to the bench of the District as a reward of his loyalty, George P. Fisher not only blindly followed the leading counsel for the government, but he bettered his instructions. Upholding the validity of the military commission in the face of the Milligan case, he characterized the opinion of the Supreme Court as

“being predicated upon a misapprehension of historic truth” and, therefore, “we could not, perhaps, have looked for a more rightful deduction.” He laid down the law that “to murder the duly elected President of the most powerful people on earth is not less atrocious in its character than to compass the death of a King,” in which case, as in the case of treason, there could be no accessories for all were principals; overruling Sir Matthew Hale on this point by citing “two cases reported in that book of highest authority known among Christian nations, decided by a judge from whose solemn tribunal all judges and jurors will, in the great day, have their verdicts and judgments passed in review”: one, that of Naboth and Ahab in the twenty-first chapter of the first book of Kings; and the other, that of David and Uriah in the eleventh chapter of second Samuel. In conclusion, he reminded the jury, as Pierrepont had done before him, that a verdict adverse to the government might lead to the removal of the capitol from a city where “the persons of the public servants commissioned by the people of the nation to do their work” were not “safe and sacred from the presence of unpunished assassins within its borders.”

The jury retired about noon of the same day and remained in seclusion until one o’clock on Saturday, the tenth, when it came into court with a paper informing the judge that the jurors “stood precisely now as when they first ballotted,”\* “nearly equally divided, and could not possibly make a verdict.” Whereupon

\* 8 to 4 for the prisoner.

the jury was discharged against the protest of the prisoner who was remanded to the custody of the marshal. The idea of another trial, it is probable, was never seriously entertained by the government. Under a recent act of Congress, another jury could not have been selected before the ensuing February; and, for the sake of appearances, the defendant was kept in jail in the meantime; and, subsequently, the case was set down for the twenty-fourth of that month. On that day, however, the House of Representatives being in the act of impeaching the President, the government was in no condition to enter upon so arduous an undertaking. On the twenty-second of June, 1868, the defendant was released on bail, and three months later the indictment was *nol. prosed.*\*

That so prominent an accomplice in the murder of the ever-to-be-lamented Lincoln should have been allowed to walk the earth a free man, without arousing an overwhelming outburst of popular wrath, is explicable alone on the hypothesis that the public at large shared in the misgivings of the authorities as to the strength of their case. The plea that a conviction was impossible from a jury of such a vicinage as Washington was a gratuitous insult to the citizens of the capital, in the face of the fact that every member of the late jury was agreed upon by both sides; and, moreover, the plea, if founded on fact, may have furnished a ground for a change of the place of trial, but could constitute no reason why the surviving murderer of the President should go unwhipped of justice.

\* Rep. of Sec. of State, Feb. 1, 1868.

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Another conclusion follows from the discharge of the prisoner. Had Surratt been caught in time to be tried by the military commission, nothing could have saved him from the fate of his mother. Conversely, had Mary E. Surratt been spared to be tried by a civil tribunal, she never would have met the death of shame, but would have been restored to the arms of her now heart-broken daughter. As the decision of the Supreme Court of the United States made void the proceedings of the military commission as matter of law, so the discharge of her son reversed its condemnation on the merits of the case.

## CHAPTER IX

### THE PETITION FOR COMMUTATION

THE trial of the son of Mary E. Surratt was made historically memorable not only by the destructive effect of the failure to convict and the subsequent discharge of the accused upon the verdict in her case, but, especially so, by the emergence into the light of day of the petition in her favor of a majority of the officers who condemned her to death. This paper, the knowledge of which was confined to the members of the tribunal who met in secret session, on the return of the judge advocate general from his interview with the President when the death warrant was signed, disappeared in the archives of his office. Various rumors of its existence were put to rest in October, 1865, by the publication of the official report of "The Trial of the Conspirators" compiled and arranged by Benn Pitman, "Recorder to the Commission," with the permission of Judge Holt granted under the authority of the Secretary of War, on condition that the work "be prepared and issued under the superintendence of Colonel Burnett, who will be responsible for its accuracy." The book was designed to be not merely a transcript of the testimony, but a history of the assassination; containing not only matters strictly of record but every document and paper throwing light on the subject. The evidence was reduced to narrative form, grouped under appropriate heads and, as far as

possible, distributed among the several prisoners respectively against whom it was directed. The findings and sentences were given with the President's warrant approving them. Every order, from the one convening the commission to the one changing the place of confinement of the defendants sentenced to imprisonment from the Albany Penitentiary to the Dry Tortugas, was scrupulously included. Room was found for the proceedings under the writ of *habeas corpus* on behalf of Mrs. Surratt. An appendix contained the opinion of the attorney general sustaining the jurisdiction of the court, dated "July, 1865"; "Instructions" to the armies in the field, in ten sections; the supplementary affidavit of Wiechmann heretofore commented upon, and another by the officer in whose custody Dr. Mudd was taken to his distant prison, detailing an alleged confession of the man he had in charge. The volume was illustrated by a frontispiece containing photographs of Booth, Surratt and all the defendants except Mudd; by a map of the route taken by Booth in his flight; by a diagram of the stage and proscenium of the theatre as they appeared at the moment the assassin leaped from the box; and a plan of the streets and alleys in the vicinity of the building. And yet, with all this superabundance of material and wealth of illustration, there was not the faintest indication of the existence of a paper of such primary significance as a petition for the commutation of the death sentence of the one woman among the eight prisoners on trial.

The rumors, however, which this official publication endorsed by a certificate of Colonel Burnett vouching for "its faithfulness and accuracy," effectually scattered, were brought to life again by the rupture of the President with the Congress and by the suspicious delay in the extradition of Surratt. During the first week of the trial just reviewed, Pierrepont followed up his promise concerning Booth's diary by the following statement: "It has likewise been circulated through all the public journals, that after the former convictions, when an effort was made to go to the President for pardon, men active here at the seat of government prevented any attempt being made or the President being even reached for the purpose of seeing whether he would not exercise clemency; whereas the truth and the truth of record which will be presented in this court is that all this matter was brought before the President and presented at a full cabinet meeting, where it was thoroughly discussed; and after such discussion, condemnation and execution received not only the sanction of the President but that of every member of his cabinet."\* The testimony closed without the presentation of any such evidence, a breach of promise with which Merrick twitted his adversary in his summing up: "Where is your record?" he asked. "Why didn't you bring it in? Did you find at the end . . . a recommendation of mercy in the case of Mrs. Surratt that the President never saw?"†

\* This, evidently, refers to the informal discussion of the morning of the execution, mentioned by Harlan in his letter to Holt. See *infra*, p. 239.

† See Note I to this chapter in Appendix.

On Saturday (August 3rd) Pierrepont, in opening his address to the jury, endeavored, under the guise of a defence of the military commission, to redeem his broken promise:

“The counsel certainly knew when they were talking about that tribunal . . . that President Johnson ordered it with his own hand; . . . that President Johnson, when that record was presented to him laid it before his cabinet, and that every single member voted to confirm the sentence and that the President with his own hand wrote his confirmation of it, and with his own hand signed the warrant. I hold in my hand the original record, and no other man, as it appears from that paper, ordered it. No other one touched the paper; and when it was suggested by some of the members of the commission that in consequence of the age and sex of Mrs. Surratt it might possibly be well to change her sentence to imprisonment for life, he signed the warrant for her death with the paper right before his eyes—and there it is (handing the paper to Mr. Merrick). My friend can read it for himself.”

There it was at last! This insignificant-looking flying leaf! Omitted from the adjutant general’s order promulgating the sentences, omitted from the official report of the trial, unmentioned by the judge advocate in his “Brief Review” submitted to the President and in his annual report to the Secretary of War, withheld from the public for the last two years; there it was hanging at the end of the record which the counsel for the United States held up in his hand and flung down upon the table. Even now, its contents are not disclosed. It is not put in evidence nor

read to the jury. The counsel belittles it as a mere "suggestion." Merrick declines to touch it on the ground that the opportunity has passed for taking evidence in relation to it; and the roll lies there unopened until Holt calls the same afternoon to reclaim it. But, though still unpublished, enough had been said in the crowded court room, on a trial attracting the attention of the whole country, to preclude the possibility of its sinking back into the suspicious secrecy in which it has hitherto been enveloped. The declaration of the counsel was spread abroad by the newspapers of Sunday, and the President and his cabinet ministers must have read it. What happened on Monday, in consequence, the chief clerk of the Bureau in a letter to its head subsequently narrated:

"On the 5th of August, 1867, Mr. Stanton, then Secretary of War, sent for me, and in presence of General Grant, asked me who was in charge of the bureau in your absence. I informed him Colonel Winthrop. He requested I should send him over to him, which I did. The colonel returned and asked me for the findings and sentence of the conspiracy trial, telling me he had to take it in person to the President. On taking the portion of the record referred to from the bundle, I found from the frequent handling of it several of the last leaves had torn loose from the ribbon fastening, and to secure them I put the eyelet in one corner of it."

The official relations between the President and his Secretary of War at this date were strained to the point of breaking; the President on the previous Thursday having informed General Grant that he

could no longer tolerate Stanton in his cabinet, and Grant, on the same day, having written the President a letter remonstrating against the threatened removal. The message calling for the record, therefore, must have startled the occupants of Stanton's office, who may have been in the act of conferring together over Pierrepont's revelation, the amount of truth in which Stanton was able to appreciate. Holt, whether absent or present, was in no condition to face the man with whom he held the confidential interview just two years and one month ago. Whether he had been too effusive in detailing the history of the document he carried to the court room on Thursday and reclaimed on Saturday, or whether the counsel, in the exuberance of his verbosity, went outside his brief, the truth was, according to Holt himself, that, at this date, he was not aware that the record was ever laid before the cabinet, much less that the petition had been the subject of discussion as Pierrepont affirmed; a state of ignorance in which, Holt subsequently charged, he was kept by Stanton himself. In this situation it was lucky that a subordinate who knew nothing of what took place at the confidential interview was sent with the record, as thereby, it is probable, an immediate explosion was averted. According to Andrew Johnson's statement six years later, he sent for the record "with a view of examining, for the first time, the recommendation in the case of Mrs. Surratt"; and "a careful scrutiny" convinced him "that it was not with the record when submitted" for his approval, and that he "had neither before seen or read it." If this statement was true,

then as a matter of course Pierrepont's public declaration as to the presence of the petition before the cabinet had no foundation in fact; and, on the same day and after he had made this astonishing discovery, the President called for the resignation of the Secretary of War, and, receiving a refusal couched in offensive terms, as soon as he could arrange with Grant to take his place, suspended the offender.

During these eventful hours, Pierrepont, unconscious of the flurry he had raised in the War Department and unmindful of the distressing predicament in which he had placed the judge advocate, was plodding his way through the mass of testimony it was his duty to analyze; while Holt was waiting on the anxious seat for an opportunity to apprise the counsel of the necessity to soften down his over-emphatic affirmation. The desired interview must have taken place, for, on the morning of Tuesday, before resuming his address, Pierrepont interjected what on any other hypothesis would have been an uncalled-for and superfluous piece of information.

"You will recollect, gentlemen, when a call was made several days ago by Mr. Merrick . . . asking that we should produce the record of the conspiracy trial, that I brought the record here and handed it to counsel. I then stated that, as a part of that record was a suggestion made by a part of the court . . . that if the President thought it consistent with his public duty they would suggest, in consideration of the sex and age of one of those condemned that a change might be made in the sentence to imprisonment for life. I stated that I had been informed that when that record was before

the President and when he signed the warrant of execution, that recommendation was then before him. I want no misunderstanding about that, and I do not intend there shall be any. That is a part of the original record which I here produced in court. It is in the handwriting of one of the members of that court, to wit, General Ekin. The original of that is now in the possession and in the handwriting of Hon. John A. Bingham. When the counsel called for that record I sent the afternoon of that day, to the judge advocate general, in whose possession these records are. He brought it to me with his own hand, and told me with his own voice, in the presence of three other gentlemen, that that identical paper, then a part of the record, was before the President when he signed the warrant of execution, and that he had a conversation with the President at that time on the subject. That is my authority; subsequently to this, having presented it here, the judge advocate general called to receive it back, and reiterated in the presence of other gentlemen the same thing. That is my knowledge and that is my authority."

Here every trace of an allusion to cabinet officers or a cabinet meeting is carefully eliminated and the matter in difference narrowed down to what took place between the President and the judge advocate when alone together—the former averring that he had not seen or read the paper, the latter that the petition was before the President and that the two officials had a conversation on the subject; averments, both of which, curiously enough, might be true and yet the issue remain undetermined.

In this unsettled condition, the controversy sank into silence for six years—a period long enough, as it appears, to obliterate from the memory of the parties

concerned this interesting incident of the Surratt Trial. The President, for his part, took no steps to call his subordinate to account for so grave a dereliction of duty. Indeed, there is nothing to show that he ever countenanced the rumors that prevailed so far as to question the accused official on the subject. It is certain that until the startling outburst of Pierrepont came to his ears, his curiosity had never been aroused to inspect the record; and even after he got possession of the criminating document, which he retained until the following December, it does not appear that he communicated his conviction, "it was not with the record," to the person most deeply implicated. He suspended Stanton, without whose dictation Holt would not have dared to move a finger in the matter; but, so far as appears from his message assigning the reasons of his action, the suspension was not on account of the complicity of the War Minister in the delinquency of his inferior officer; and he suffered the culprit to remain in office until the close of his administration. It should be remembered, however, as an offset to this non-action, that Johnson at this time had ample reason to walk warily in such a delicate affair. The impeachers were on his track, scanning his whole course of conduct from his appointment as military governor of the state of Tennessee up to the current moment. The assassination committee, as we have seen, was crying out to every professional witness in the land, "Ho! come hither and partake of the bounty of the government." Stanton and Holt were actively aiding and abetting the

most inveterate of his adversaries; Stanton pacing up and down outside the War Office on the watch for the signal from the Senate to let him in, and Holt colloquying with Butler and Ashley how, by means of the prerogative of pardon, to let loose upon him the champion perjurer of the Conspiracy Trial.

On the other hand, the judge advocate for his part drew no consolation from the silence reigning at the White House. As though apprehending an outbreak from that quarter, he set about collecting testimony favorable to his version of the private interview, Stanton, to whom he had hastened to tell what had occurred in the President's office, for some mysterious reason would afford him no help, and to Colonel Burnett, who, it appears, heard what he told Stanton, he made no appeal. From his senior colleague on the Conspiracy Trial he may have sought counsel, but Bingham was still nursing the wounds Butler had inflicted, and his voluble lips were sealed. To General Ekin he did apply, within two weeks after the Surratt Trial, reminding that member of the commission by letter of his call on the day of or immediately after the execution to ascertain the fate of the petition; and the general sent a reply detailing what the judge advocate had told him on that occasion as fully as if the correspondence had been arranged beforehand; evidence, however, liable to the objection that it was given by one of the parties to the issue.

This, so far as it is known, was the sole fruit of his researches during the period the President kept the record in his possession. On its return to the archives

he took the precaution to obtain from two of his clerks letters describing the condition of the document when taken away and when brought back, with special reference to the precise position of the paper in dispute. During the period when more than two thirds of the House of Representatives were bent upon the decapitation of the President and thirty-five out of the fifty-four senators voted to remove him from office, during the remainder of his term when, stripped of every prerogative of his office, he was simply holding on to give place to the head of the army who had been chosen his successor, the judge advocate takes no steps to silence "the atrocious calumny" he professes to trace to the door of the despised apostate. He himself, still the chief of the Bureau every officer of which down to the lowest underling is devoted to his cause, basks in the sunshine of public favor. Stanton, though forced to quit the cabinet, is still the idol of the radicals, and the distinguished special assistant advocate on the Conspiracy Trial has added to the laurels gained by the conviction of Atzerodt by his brilliant effort to make under the forms of law the same vacancy in office that Providence might have anticipated by endowing the *quasi* assassin with a stouter heart. Andrew Johnson, defeated at all points, retires into what, to all appearance, is everlasting oblivion, leaving his unpunished subordinate, hat in air, cheering on the triumphal car in which the Conqueror of the Rebellion sits alone in his glory. And, yet, the judge advocate, pestered as he is by what he describes as "this slanderous rumor buzzing around

his ears," takes no advantage of these haleyon days to vindicate his character. It is true that, in December, 1868, he addresses a letter to the pastor of St. Paul's church in Washington who attended Atzerodt to the scaffold and in the evening called at the White House, eliciting from the reverend gentleman a repetition of the talk of the President to the effect that "very strong appeals had been made" for clemency toward Mrs. Surratt—telegrams, even threats had been used—but he could not be moved, for the woman "kept the nest that hatched the egg"; but this inconclusive bit of testimony is all he is able to gather during the next four years.

As for the ex-President, he seems to have paid no further attention to the matter. Immediately on his retirement he threw himself into the contest going on in his own state against the reign of the negro and the carpet-bagger, gaining a majority of the legislature in favor of his return to the United States Senate, but, eventually being defeated because the other senator was a resident of his section. In 1872 he ran for representative in Congress from the state at large against General Cheatham, the candidate of the recent secessionists on the one hand, and Horace Maynard, the candidate for the radicals on the other, in which he was assailed for "the murder of Mrs. Surratt," but made no apology and no mention of the petition. And so the matter, apparently, sank to its final rest.

On the twenty-fourth day of December, 1869, at the city of Washington, died the man who knew the whole history of this interesting document. The device of

substituting a prayer to the President to do what the majority of the tribunal had the power of doing and were inclined to do themselves, if it did not originate with him, had at least his hearty concurrence. Whether the President saw that paper or not he knew as well as Holt himself, and one authoritative word from him would have settled the question at once. And yet Edwin M. Stanton died without speaking that word. According to Holt he not only kept silent himself, but he enjoined silence on others who knew what Holt insisted was the truth. Three years after the death of the member of Johnson's cabinet who might be fitly styled his confidential enemy, died (in October, 1872) another member of that cabinet who was in truth the confidential adviser of his chief to the end. This event, although in the lifetime of the deceased he had never sought his help, seemed to have stirred the judge advocate to a revival of the search he had allowed to sleep so long. His first move was to initiate a correspondence between himself and his distinguished colleague on the military commission, then living in the capital, based on the assumption that the two men had not conferred with each other on the subject for the past eight years. His letter of the eleventh of February, 1873, closed with a request that Bingham would state whether or not he had a conversation with William H. Seward concerning the petition and, if so, to state all he said on the subject. Bingham's reply is more than satisfactory, indeed running over. He does not confine himself to what Seward said, but brings in Stanton, whom Holt had not ventured to

include in his inquiry. After stating that he called Stanton's attention to the petition "before the final action of the President" (as if it were possible that the war minister could have been unaware of its existence), he goes on to say that "after the execution" hearing the rumor that the President had not seen the petition, he "called upon Secretaries Stanton and Seward and asked if the petition had been presented to the President before the death sentence was by him approved, and was answered by each of those gentlemen that the petition was presented to the President, and was duly considered by him and his advisers before the death sentence . . . was approved, and that the President and the cabinet, upon such consideration were a unit in denying the prayer of the petition; Mr. Stanton and Mr. Seward stating that they were present." Feeling the need of some explanation of his failure for so many years to pass this conclusive information on to his sorely-tried professional brother, the writer subjoins the following: "Having ascertained the fact as stated, I then desired to make the same public, and so expressed myself to Mr. Stanton, who advised me not to do so, but rely upon the final judgment of the people." "A sad, sad mockery!" indeed, as Holt exclaims; but the explanation, such as it is, does not cover the case of Seward to whom, indeed, the writer had not seen fit to "express" himself.\*

Armed with this hearsay testimony of what the two members of Johnson's cabinet who were silent in the

\* See Note II to this chapter in Appendix.

grave had said on the subject, the judge advocate felt warranted at length to call upon the members still living. To McCulloch and Welles who, like Seward, remained staunch to their chief, he made no application. But to Speed and Harlan, who resigned because of disagreement with the President's policy, he did apply, inclosing a copy of Bingham's letter. Speed replied from Louisville, on the thirtieth of March, and Harlan, who was a senator of the United States from Iowa at the time of the President's trial and voted him guilty, on the twenty-seventh of May. In July, the judge advocate, as if not yet quite confident in the strength of his case, arranges another correspondence between himself and General R. D. Mussey—who, at the time of the assassination, happening to be in Washington on business concerning the freedmen of Tennessee, was detailed for duty as military secretary of the new-made President and acted in that capacity until he went over to the side of the majority in Congress in the fall. To him, Holt appealed to disregard, out of consideration for a man suffering under so gross a calumny, the confidential character of his former official position so far as to reveal "any declarations of the President" on the subject of clemency to Mrs. Surratt; and, without waiting for a response, on the fourteenth of August he addressed a communication to the Secretary of War submitting "the proofs of his innocence"; viz.: copies of his correspondence with Bingham and with Speed and Harlan, together with the letters of his two clerks and the correspondence with the reverend doctor Butler,

on file since 1868. General Mussey delayed no longer than the nineteenth in coming to the aid of his friend with "his knowledge of the facts attending the conviction of Mrs. Surratt," saying: "I am very confident, though not absolutely assured, that it was at this interview (i.e. just after the President came out of the room where he had been closeted with Holt) Mr. Johnson told me that the court had recommended Mrs. Surratt to mercy on the ground of sex (and age I believe). But I am certain he did so inform me about that time." And, having in the meantime received complete absolution by a letter from Secretary of War Belknap, on the twenty-sixth, the judge advocate laid "before the loyal public," through the columns of the *Washington Chronicle* in its issue of that day, the entire series of letters with notes and comments, a publication immediately embodied in a pamphlet entitled, "Vindication of Hon. Joseph Holt, Judge-Advocate-General of the United States Army."

In breaking the long silence covering this *scandalum magnatum* which its reputed originator seemed to have forgotten, this veteran in court-martial practice knew well the risk he was running. To demand a court of inquiry, as he pleads, while "his enemy and slanderer" could "play the quadruple rôle of organizer of the court, accuser, witness and final judge" would have been "the very madness of folly." And, during the four years that had elapsed since his adversary was swept out of power, he confesses that he could not muster sufficient confidence in his single oath, corroborated by "the circumstantial evidence" he was

able to collect, to beard the wounded lion in his den. It was not until, at so late a day, he summoned his former special assistant to lift the veil from cabinet deliberations, access to which, he says, had been "thus far denied him," that he could brace himself for the encounter. Provided from this source with the necessary ammunition, he now revives the declaration of Pierrepont on the Surratt Trial, which he forced that counsel to withdraw, and, relegating the confidential interview to the rear, he constitutes the cabinet consideration of the petition as the very head and front of his defence. And this misplaced strategy turned out fatal to his contention. To begin with, executive approval of the proceedings of military commissions or courts-martial is rarely a cabinet question. The President acts in the capacity of commander-in-chief, calling to his aid, if he see fit, the Secretary of War and, it may be, the attorney general, who alone are supposed to be familiar with the testimony. Possibly the commutation of a death sentence in a very celebrated cause might be broached incidentally at a cabinet meeting; but whether a prayer for mercy because of sex made by the majority of a military court should be granted or not is a collateral question addressed so exclusively to the discretion of the executive as to preclude the possibility of his laying it before a regular session of his official advisers. And, moreover, if Andrew Johnson, in the present instance, had followed so unprecedented and remarkable a course, there could have been no mystery or secrecy about the petition any more than about the record to

which it was attached. The paper would have appeared in every subsequent proceeding connected with the case, and its existence known of all men. Finally, not one of the officers who handled the secret roll supposed for a moment that it was a proper subject for cabinet scrutiny. Not Holt, who kept it strictly private during the four-days illness of the President, communicated to Stanton and Burnett the final decision of the executive as soon as it was made and consigned the warrant to the adjutant general to be promulgated on the morrow. Not Stanton or Burnett who received the communication, or the adjutant general who delayed not to promulgate the speedy doom. Indeed, had such been the rule, concealment of the petition, being certain of detection, never would have been thought of and Rumor would have remained silent, perforce, for want of wind for her trumpet.

It is no wonder, therefore, that the two living ex-cabinet officers whom the judge advocate summoned as witnesses failed signally to come up to the mark. Speed declined to answer pointblank and for a reason that verges on the absurd. He states that he saw the paper attached to the record "in the President's office"; but he goes not a step farther. He does not say whether or not any other cabinet officer was there or even that he himself was there in his official capacity. "I do not feel at liberty to speak of what was said at cabinet meetings," he says—which he was not asked to do, but simply to state whether or not a particular paper was before the cabinet at a meeting held eight years ago; and to refuse such a reasonable

request because of his "sense of propriety" was stretch of official decorum which throws a sinister light on the real motive of his silence.\* Harlan, for his part, recalls only "an informal discussion," by three or four members of the cabinet, of the question of commutation, at which he declares positively "no part of the record of the trial, the decision of the court or the recommendation of clemency was present." He remembers inquiring at the time whether the attorney general examined the record and of being informed that the whole case had been carefully examined by that officer and also by the Secretary of War; and he further states that the question was never submitted to the cabinet for a formal vote.

Notwithstanding these serious flaws, now plainly discernible, the "Vindication" was hailed by the numerous friends of the author with an outburst of congratulation. His antagonist, far off in the mountains, was suffering from a second defeat in the effort to reenter public life. The columns of the very journal that was the vehicle of his triumph were adorned by the "Reminiscences" of Henry S. Foote, wherein the ex-President was "arraigned as having been in complicity with President Lincoln's murderers." Months passed by, and it seemed that the object of this twofold attack was disposed to treat the challenge of his former subordinate with the silent contempt under which the insane charge of the ex-senator withered and died. The judge advocate began to soothe himself with the imagination that the man who

\* See Note III to this chapter in Appendix.

turned Stanton out of office, outfaced Grant and defied the Congress, kept in the background from fear. His idea was that while Seward and Stanton were living Johnson dared not speak out, and, now, when their deaths had removed that source of apprehension, he was deterred from coming forward because he gathered from Holt's *Vindication* that Bingham had perpetuated their testimony. It required, so Holt imagined, "the pressure of those who, having for years engaged in spreading this calumny, would naturally insist that he should stand up to their labors in his behalf" to force him to the front. Among the gifts which nature had showered on Joseph Holt, that of reading character was not numbered; but he never made a greater blunder in so doing than when he imputed reluctance to engage in a fight to Andrew Johnson. And this notion he soon had good reason to reconsider.

The answer of Johnson, published in the *Chronicle* of the twelfth of November, simply shattered the position his challenger had deliberately chosen to reassume. That the petition was "duly considered" by the President "and his advisers *before* the death sentence upon Mrs. Surratt had been approved" and that the cabinet was "a unit" in denying its prayer, he showed to be, under the undisputed facts of the case, an absolute impossibility.

"The papers . . . were considered and approved by me in the presence only of Judge Holt; who himself wrote the approval for my signature, and, after I had affixed to it my name, took away with him the record. This was the first and

only time I saw the papers prior to the execution; and, as my approval was given . . . in the afternoon of Wednesday the 5th of July, 1865; and as immediately afterward the record must have been taken by Judge Holt to the War Department, where by an order of the adjutant general of the same date, the approval was promulgated and General Hancock commanded to cause the sentences 'to be duly executed'; and as no cabinet meeting was held thereafter until Friday . . . (the day of the execution), it is impossible that Mrs. Surratt's case could have been submitted to the cabinet 'before the death sentence was by him approved'—as Judge Bingham distinctly asserts." "The years which have intervened seem not only to have weakened Judge Bingham's respect for" the advice of Stanton, but "also seriously to have impaired his recollection of the words of which his ears were the recipients."

The informal discussion to which Harlan refers and Holt identifies as "undoubtedly the cabinet meeting to which Bingham refers," Johnson places on Friday, "the day of the execution—two days after the approval of the sentence." The point made by the judge advocate that, because Harlan on that occasion was informed that the whole case had been examined and the only question "raised was the one of clemency on account of sex—the ground taken in the petition alone," therefore, "the petition itself had also been examined" and "reported upon"; Johnson meets as follows:

"In passing upon the case of a woman sentenced to undergo the extreme penalty of the law, the simple fact that she is a woman appeals to sympathy and such mercy, though there

may not be, from a portion of those who tried her, a recommendation that the dungeon should be substituted for the gibbet. This consideration, in connection with that of age, had influenced five members of the commission. . . . If the question of sex and age presented itself to the minds of those who had tried and condemned her, is it strange that in the absence of any petition whatever it also suggested itself to the executive, who had to pass upon their finding?"

The other branch of the Vindication, viz., the confidential interview at which the death warrant was drawn up by the judge advocate and signed by the President, as we have already intimated, Holt subordinates entirely to the "testimonies" he submits of the cabinet's consideration of the petition, without which he would not have ventured to appeal to the public. Indeed, what he has to say concerning what took place on this momentous occasion he does not say directly to the public, but incorporates in his letter of inquiry to his colleague on the commission:

"In the discharge of my duty, when presenting that record to President Johnson, I drew his attention to that recommendation, and he read it in my presence, and before approving the proceedings and sentence." To this branch Johnson's answer was just as explicit as his answer to the other branch of the case, but, owing to the absence of even so slight corroboratory testimony as Holt was able to adduce, perhaps not so conclusive.

Referring to Holt's reminder to Bingham that the President's friends fabricated the charge in question

“to shield the executive,” he embraces the opportunity to say: “I have never attempted, through friends or otherwise, to shrink from any responsibility in connection with the execution of President Lincoln’s assassins or from the faithful discharge of any other duty imposed by the Constitution and laws of the country”; and, then he gives the following plain statement:

“The record of the court was submitted to me by Judge Holt in the afternoon of the 5th day of July, 1865. Instead of entering the executive mansion by the usual way, he gained admission by the private or family entrance to the executive office. The examination of the papers took place in the library, and he and I alone were present. The sentences of the court in the cases of Herold, Atzerodt and Payne were considered in the order named, and then the sentence in the case of Mrs. Surratt. In acting upon her case no recommendation for a commutation of her punishment was mentioned or submitted to me; but the question of her sex, which had already been adverted to and discussed in newspaper columns, presented itself, and was commented upon both by Judge Holt and myself. With peculiar force and solemnity he urged that the fact that the criminal was a woman was in itself no excuse or palliation, that when a woman ‘unsexed herself’ and entered the arena of crime, it was rather an aggravation than a mitigation of the offense; that the law was not made to punish men only, but all, without regard to sex, who violated its provisions; that to discriminate in favor of Mrs. Surratt and against Herold, Atzerodt and Payne, who were sentenced by the same court and at the same time to suffer the penalty of death, would be to offer a premium to the female sex to engage in crime and become the principal actors in its commission; that since the

rebellion began, in some portions of the country, females had been prominent in aiding and abetting traitors, and he thought the time had come when it was absolutely necessary, in a case so clearly and conclusively established, to set an example which would have a salutary influence. He was not only in favor of the approval of the sentence, but of its execution at the earliest practicable day.

“Upon the termination of our consultation Judge Holt wrote the order approving the sentences of the court, I affixed my name to it, and rolling up the papers, he took his leave, carrying the record with him, and departing as he had come, through the family or private entrance.”

He points out in passing that Speed must have seen the record with the petition attached not, as that ex-cabinet officer states, in the “President’s office,” but in the War Office whether it was taken by Holt immediately on the termination of the confidential interview; unless (as Holt subsequently suggests) he was a secret witness to that official colloquy.

The head of the Bureau of Military Justice having had the effrontery to upbraid his present adversary for “rendering inoperative” the writ of *habeas corpus* in the case of Mrs. Surratt, remarking in depreciation of his “defiant action,” that otherwise “her life would not *then* have been taken,” the ex-President, in reply, displays none of the tardy compunction which seems to trouble the judge advocate, but justifies his disobedience of the writ as the discharge of an imperative duty imposed upon him by an act of Congress. He closed his answer, which the hostile journal publishing it pronounced “a remarkably luminous docu-

ment, dignified and free from needless personalities and all vituperation," by the following animadversion upon the absence of the petition from the official report of the trial:

"If we may accept the statement of the judge advocate general, the charge against which he now attempts to defend himself was made 'soon after the execution of Mary E. Surratt,' and his attention having been then necessarily called to the subject, it was his imperative duty to supply the omission or to make the correction. It is doubtful, however, whether, had not the existence of the petition by some means become known to 'certain public journals,' it would ever have been divulged, or carefully attached to the papers by 'patent eyelets' to become 'confirmation strong' of Judge Holt's 'innocence' of the 'cruel imputation' under which he has been content so long to lie.

"It being absolutely certain that if the petition was attached to the original record before it was submitted to the President, it is not to be found in the printed record authorized by Judge Holt and certified to by Colonel Burnett, special judge advocate of the commission, the question arises, which of the two is authentic and genuine? If the record in possession of the judge advocate is true, then that is false which he has given to the public. If, on the other hand, the record, published with his official sanction is true, then that in his bureau is false necessarily. Judge Holt is at liberty to accept either alternative, and to escape as he may the inevitable conclusion that he did not only fail to submit the petition to the President, but suppressed and withheld it from the official history of the most important trial in the annals of the nation."

This "remarkably luminous document" drew forth a so-styled "Refutation," which unlike the paper it was intended to refute, was, indeed, full of "needless personalities and all vituperation." At the outset, oblivious of his own plea in excuse for his long silence—"I was without testimony and knew not where to look for it"—the judge advocate is thrown into a passion at the bare suggestion of his antagonist, in excuse for his not calling his delinquent subordinate to account, that there might have been at that time "reasons" that "would in all probability have operated against any development of the facts of this case." So far does his wrath carry him away that he plucks up by the locks the carcass of the self-slain charge that Butler and Ashley and Conover had dropped in despair. "There must have been," he insinuates, "something very fearful in his contemplation to lead him to disregard an imperative public duty, . . . rather than suffer the field of inquiry in relation to the conspiracy and assassination to be again opened. Was it apprehended that in the shadows of the field an accomplice or accomplices might be lurking who could not be safely dragged to light?" And in this denunciatory strain he continues to the end. Johnson's recapitulation of the arguments used by Holt at the confidential interview adverse to clemency to female criminals, which bear so remarkable a resemblance to those put into the President's own mouth by the reverend doctor Butler and General Mussey in their letters embraced in the *Vindication*; his insinuation that the reason why the papers were

not submitted in the usual way through the Secretary of War but by the judge advocate in private was "to save time and hasten the execution, thus evincing the spirit that animated Holt during the entire proceedings" drove that officer to such a height of exasperation that with his record on the Conspiracy Trial, his "Brief Review" of the case and his report to the Secretary of War behind him, he assumes the attitude of a horror-stricken witness to the cold-blooded cruelty of his chief: "I should have shuddered to propose the brief period of two days within which the sentences should be executed, for with all the mountain of guilt weighing on the heads of those wretched culprits, I still recognized them as human beings, with souls to be saved or lost, and could not have thought for a moment of hurrying them into the eternal world, as cattle are driven to the slaughter pen, without a care for their future."

Admitting that he assented to the doctrine that "sex is no excuse for treason" and advised that "the sentences should be enforced," he asseverates that he was lamblike in his course during the trial, that he did not fix the fatal Friday, though "he wrote it down," yet, in the newborn tenderness in his heart he burst forth in the following arraignment of his superior officer:

"As chief magistrate he was, under the Constitution, the depository of the nation's clemency and mercy to the condemned, and a pressing responsibility rested upon him to *hear the victims of the law before he struck them down.* . . . Did he do this? On the contrary . . . he gave a peremptory

order to admit nobody seeking to make any appeal in behalf of the prisoners, . . . even Mrs. Surratt's spiritual adviser who came to beg for her a day or an hour of life." And . . . after having closed his door, his ears and his heart against every appeal for mercy in her behalf, hurried this helpless woman almost unshrived to the gallows."

This is rich indeed! But the strongest evidence that the judge advocate had lost his self-possession was the transparent sophistry with which he seeks to evade the blow to Bingham's cabinet meeting. Conceding that from the final adjournment of the court to the day of the approval of its sentences "the President had been sick in bed and had of course had no opportunity of conferring with any members of his cabinet," yet he stigmatizes the conclusion that a meeting *before* the approval was an 'impossibility as "intensely disingenuous,'" not indeed because it was illegitimate, but because it left out of view the possibility of a meeting *after* the approval. He maintains that the signing of the death warrant and its promulgation amounted to "no more than a letter written and remaining on the 'President's' table which he could recall at pleasure until posted"; that is, his decision was revocable at any time before the drop fell. "What Messrs. Seward and Stanton clearly meant was that before the President had *finally and definitely approved* the sentences," the question of commutation was raised in the cabinet. He scouts the "idea" that the President "ever thought of enforcing the sentences, without conferring with at least three members of his cabinet whose duties connected them most intimately with the

case," as one "not to be entertained for a moment." Yet that very "idea" he must have entertained himself. Else, why did he, coming with the signature to the death warrant hardly dry in his hands, inform the Minister of War of the President's determination and "the view" on the subject of mercy to female rebels which the President so "vehemently presented"?\* Else, why did he "shudder" when the Chief Magistrate fixed with cruel haste "the brief period of doom"? Stanton, whose duties, surely, "connected him most intimately with the case," evidently did not expect to be consulted after he heard this disposition of the matter. And General Mussey—Johnson's private secretary—whose letter, according to Holt, "constituted so impressive a part" of his *Vindication*—appears to have entertained no doubt of its finality:

"Mr. Johnson came out of the room where he had been with you (i. e. Holt) and said to me that the papers had been looked over and a decision reached. I asked him what it was. He told me, approval of the finding and sentences of the court; and then gave me the sentences, as near as he remembered them, and said that he had ordered the sentence, where it was death, to be carried into execution on the Friday following. I remember looking up from my desk with some surprise at the brevity of this interval, and asking him whether the time wasn't rather short. He admitted that it was, but said they had had ever since the trial began for 'preparation'; and either then, or later in the day, spoke of his design in making the time short, so that there might be less opportunity for criticism, remonstrances, etc. . . . He also instructed me

\* See Note III to Chap. V in Appendix.

that he did not desire to see any one . . . and to direct all . . . , if they had any fresh evidence or any new reason why the sentence should not be executed, to send them to you that you might hear their story and communicate it to him."

Finally, the inhabitants of the capital, when, on Thursday morning, the proclamation of death within twenty-four hours was heard on the streets, and the condemned when it was read in their cells at noon, seemed to be under the same impression.

But although the judge advocate is driven to concede that there could have been no cabinet meeting *before* the approval, he does succeed in making it appear, and that by the admission of Johnson himself, that there was some sort of a consultation after the death warrant was signed. Still this does him no good; for the meeting could have been no other than the incidental discussion alluded to by Harlan, when neither record nor petition was present; for even Holt does not contend that there could have been *two* meetings after the President's decision. He urges, however, that the signature was not final because "one of the questions involved was openly discussed" at this meeting; yea, verily, but the question discussed was not raised by the petition which, whether suppressed or not suppressed, had done its office; but by the outside pressure for a reprieve. That Friday was the regular meeting day of the cabinet is immaterial because on this particular Friday, in view of the awful scene about to take place in the arsenal yard, no public business was done and any consultation on the

subject weighing upon all hearts could not be other than "accidental."

At the close of this memorable newspaper controversy, therefore, the question in dispute was left in the same condition as at the end of the Surratt Trial. The issue hung upon what occurred within the walls of that room where, on the fifth day of July, 1865, the President and the judge advocate sat alone with the record lying between them. And there it is destined to abide. Johnson took no notice of his opponent's fierce rejoinder, which was subsequently embodied in another pamphlet. He resumed his contest for the senatorship and, in less than two years, took his seat in the body that came within one vote of removing him from the presidency. So dramatic a triumph he was justified in regarding as a sufficient answer to the charge of his former subordinate that he had "declared a falsehood than which nothing falser has ever fallen from the lips of men or devils." On his sudden death the ensuing summer, his fellow-senators—friends and foes alike—united in testifying to his indomitable will, his unfaltering courage, his simple honesty, his nobility of soul. On the other hand, the judge advocate could not rest easy on his vaunted laurels. Ten years afterwards we find him conjuring the sphinx-like Speed, by every consideration of honor, friendship and common fairness, now that "the treacherous executive" had "gone to his own place," to come to his help. But the ex-attorney general's high-flown notion of official propriety neither the lapse of years nor the ravages of death could modify; even

the bait held out to him that he was an unseen spectator of the confidential interview, he was too wary to take.\*

So that, as we have already remarked, the testimony as to what took place on that memorable occasion is reduced to the two versions of the parties thereto; the judge advocate affirming that "he drew the President's attention specially to the recommendation in favor of Mrs. Surratt, which he read and freely commented on," the ex-President affirming that "in acting upon her case no recommendation for commutation of her sentence was mentioned or submitted."

Such being the condition of the testimony, the question of motive rises to paramount importance. Holt's answer to the question: "What could have been Johnson's motive for the original fabrication of this calumny?" was as follows: "He had not broken with the Republican party, and was doubtless, in his heart at least, a candidate for reëlection. When, therefore, the universal exasperation of the Catholics at the execution of Mrs. Surratt . . . smote clamorously upon his ears, knowing as he did the vast political power of this religious sect, his startled ambition grew sore afraid." This hypothesis was so incompatible with the known circumstances of the period to which it refers; that the friends and backers of the accused offender were forced to discard it and provide a substitute, the chief merit of which was that it stripped the original of every vestige of plausibility. According to their theory, Johnson's pet ambition is still to

\* Note III to this chapter in Appendix.

be elected President—not by the Republican party, however, but by its opponent, and, the rumor being rife that five members of the commission recommended that Mrs. Surratt's death sentence be commuted, influential members of the Democratic party, both North and South, and the Catholics all over the land, “called upon him with a loud voice to know why he had not heeded the appeal for mercy.” Here was a sufficient motive, not, as Holt charged to fabricate the lie, but to father it after it had been fabricated by others. Still, even yet, Johnson’s “ambition” was not sufficiently “startled” to force him into the open; he dared do no more than whisper his apology in a corner, being silly enough to imagine he could propitiate the Catholics by playing “the juggler behind the screen” in front of which “his puppets were dancing.”\* Even when his name was brought before the Democratic National Convention, even when canvassing in Tennessee for the Senate, he has not the courage to play his card. At length, long after every chance of being President is gone, and, then, only in pursuance of the loud challenge of his adversary, he is forced into the lists. But he comes not as a champion unknown and unnamed; he comes “with banner, brand and bow as leader seeks his mortal foe.” He utters no word in palliation, excuse or depreciation. He indulges in no shudder over the victims of his pen. He defends his disregard of the *habeas corpus*. The woman whom he hurried to the gallows he classes with “President Lincoln’s assassins.” Nay, he does

\* Note IV to this chapter in Appendix.

not even plead that his course might have been different had the petition been brought to his knowledge. He is careful to go no further than to state that, if Holt's and Bingham's names had been affixed to it, "such an application would have been duly weighed by the executive before final action in the premises."

The judge advocate, on the other side, presses the question: "What motive had I to do the deed of murderous perfidy alleged against me?"—to which an intelligent answer cannot be given until we define what the deed alleged against him precisely was. It was not charged that, when he carried the record to the President, he left the petition behind. Johnson's statement that a careful scrutiny two years afterwards convinced him that the recommendation was not with the record when presented to him is a mere matter of inference from the aspect of the roll. Neither was he accused of not broaching the question of clemency to the prisoner on account of her sex; for both parties agree that there was a consultation on the subject. The head and front of his offending was that, while conferring with the President about the case, he did not call the latter's attention to the recommendation. And this simple act of nonfeasance the judge advocate gives us good reason to believe he regarded as no "deed of murderous perfidy." Holding, as he says he did, that "recommendations to mercy by members of military courts do not in law constitute any part of the records" he did not consider himself under any obligation to call particular attention to such an unimportant addendum. As he

says, "If being there, the President did not examine it, . . . the responsibility for such remissness certainly would not rest on me." Again: "My duty and connection with them (that is, the record and recommendation) ended on laying them before the President." In fact, no overt act was necessary to the suppression of the paper. Silence was in itself suppression.

The precise dimensions of the delinquency being thus marked out, the motive is clear as day. It stares out at us from every step of the military procedure from the woman's arraignment with seven male culprits to the hour of the judge advocate's departure by the private entrance to the White House with the last hope of the trembling widow clutched in his furtive hand. In truth, the petition was substituted for a regular sentence to life imprisonment for the very reason that the one might be easily got rid of and the other could not be got rid of save by the disapproval of the commander-in-chief. The resolve of the War Department that, in default of the appearance of her fugitive son, Mary E. Surratt must die, constituted a sufficient motive to intercept the clemency of the majority of the court and to hoodwink the clemency of the executive.

## L'ENVOY

*And thus the whirligig of Time brings in his revenges*

THE Great Conspiracy postulated by the military commission, it is now conceded, never had an existence other than imaginary, and every person found guilty of being a party to it stands acquitted by public opinion—save the four who perished on the scaffold. Jefferson Davis and the Confederate agents were not tried at all. Davis outlived the charge, and statues have been erected to his memory around the base of which soldiers of the Union and soldiers of the Confederacy mingled their applause. When Thompson died, the flag of the United States was lowered at half-mast over the Department of the Interior in honor of him who once had been its head. Clay anticipated in his lifetime the vindication published by his widow after his death. Surratt still lives in the full enjoyment of his rights as a citizen. The convicts who were sent to the Dry Tortugas were pardoned by President Johnson before the expiration of his term, except the one who died in the meantime; and their pardon, as well as the discharge of Surratt, passed without a ripple upon the surface of human affairs, although, according to the evidence, they were parties to a plot which the prosecuting officers insisted was but a preparatory step to the assassination.

It remains to pass judgment upon the woman whose life a majority of the commission was inclined to

spare and who, if her life had been spared, might have been freed with her fellow-prisoners and restored to her children. The guilt of her companions in death was virtually undisputed. Her own was never more than a matter of conjecture; resting wholly on the testimony of two witnesses swearing against her in peril of their lives and whose evidence, even if credited, is not irreconcilable with innocence. That, if she had been awarded a trial by jury, she would not have been convicted will not be denied. The trial actually awarded her was not only unconstitutional and illegal, it was not even fair. She was tried, convicted and executed in the place of another who, when afterwards caught, though tried, was not convicted or executed; and about her scaffold there lingers a dark suspicion that her death sentence was extorted by one surreptitious device and her death warrant procured by another.

In view of these considerations it seems that the benefit of the doubt denied the woman in life should be given her in death; that the pardon the President, in all probability, would have issued had she survived with Arnold and Spangler and Mudd, should be granted to her memory by that tribunal whose decrees are effectual where executive clemency ceases to run.

She was not a queen, it is true; and no Burke has arisen to win the sympathies of the world by depicting her "just above the horizon, decorating and cheering the elevated sphere she just began to move in, glittering like the morning star, full of life and splendor and joy." But no American citizen, without first renounc-

ing his birthright, can allow the accident of being but a plain woman to rob her of rights held inalienable by the Declaration of Independence.

And yet there is a feeling predominant in many minds that because the injustice done her cannot be undone, to avow it is needlessly to expose the shame of one's country; that because her fate was but an incident in the triumph of the Union, it is the duty of the historian to let it sink into oblivion so that the madness that wrought it may be remembered no more. The present writer reads history otherwise than so. The judicial murder of a woman committed in the name of the nation, if judicial murder it was, ought not to be and, to the credit of humanity, cannot be forgotten. To ask that it be buried in the grave of the victim because of her lowly station is an insult to the manhood of the generations to come.

I cannot more fitly close this book than by repeating the words of England's mighty prophet of the nineteenth century:

*“The grand question still remains, Was the judgment just? If unjust, it will not and cannot get harbour for itself, or continue to have footing in this Universe, which was made by other than One Unjust. Enforce it by never such statuting, three readings, royal assents; blow it to the four winds with all manner of quilted trumpeters and pursuivants, in the rear of them never so many gibbets and hangmen, it will not stand, it cannot stand. From all souls of men, from all ends of Nature, from the Throne of God above, there are voices bidding it: Away! Away!”*

## APPENDIX

### NOTES TO CHAPTER I

#### NOTE I. (pp. 3, 6)

For these and following particulars, see *Passages, Incidents and Anecdotes in the Life of Junius Brutus Booth* (the Elder) by his daughter (Carleton, N. Y., 1866); *The Elder and the Younger Booth* (Jas. R. Osgood and Co., 1882); Macready's *Rem.*, 100-3, 126 and 149.

In the introduction to the first-mentioned work his daughter states:

"Of my father's family there were ten children, five of whom are living—Junius, Rosalie, Edwin, Asia and Joseph. By a boyish mesalliance, contracted in Brussels in the year 1814, there was one son, who, if alive, is a resident of London, and of whom we have no further knowledge."

By comparison of this last piece of information with the early tour of the Low Countries and the public marriage in London, related in the body of the work, the reader may be able to weigh the amount of credence to be given to the scandal put in the mouth of one of the characters in *Katy of Catoctin* (at p. 471), and backed up by a note (p. 472) making a general reference to court records, newspapers, and correspondence and containing what purports to be a copy of a tombstone inscription.

#### NOTE II. (pp. 8, 197-8)

##### ON THE ALLEGED POISON PLOT

In a paper entitled "Four Lincoln Conspiracies," contributed to the *Century Magazine* for April, 1896, Victor Louis Mason accepts as authentic the story that Booth while playing at Meadville, Pa., scratched on a window pane of the room he occupied in the McHenry House at that place the inscription: "Abe Lincoln Departed this Life August 13th, 1864 By the Effects of Poison"; and adds that, though discovered "the next morning" "after Booth had left the hotel and city," "little attention was paid to the writing at the time," but as soon as the assassination was heard of—eight months after—"the glass was removed from its sash, framed in a plain black wooden frame, a piece of dark velvet placed on the back to facilitate reading, and the signature of Booth, entered on the register on August 13, was cut from the book

and attached to the window glass." A photograph of the pane was given, the original, as the writer states, having been presented to the War Department by Miss McHenry, the daughter of the owner of the hotel, "some time after the assassination."

This circumstantial narrative, backed by documents, illustrates the growth of legendary material around men and events celebrated in history.

I might have admitted the tale into the text notwithstanding no allusion was made to it either on the Conspiracy Trial or the Surratt Trial, had I not come across a letter from the cashier of the McHenry House to Stanton, written so soon after the death of Lincoln as the twenty-fifth of April, 1865, which explained why the all-devouring war minister did not fasten upon an incident so relevant if true. The letter appears in Baker's *History of the United States Secret Service* on pages 547-8 and from it I give the following extract:

"Sometime ago the following words were observed to have been scratched upon a pane of glass in room No. 22 of this house, evidently done with a diamond": (giving the inscription). "In view of recent events it was deemed best to take the pane of glass out and preserve it, and we have it safe. As to the date of the writing, we cannot determine. It was noticed some months ago by the house-keeper, but was not thought particularly of until after the assassination, being considered a freak of some individual who was probably partially intoxicated. My theory now is, that the words were written in prophecy or bravado by some villain who was in the plot, and that they were written before the date mentioned, August 13th.

"As to who was the writer, we can, of course, give no definite information. J. Wilkes Booth was here several times during last summer and fall on his way to and from the oil regions. He was here upon the 10th, and again upon the 29th of June, 1864, but does not appear to have been assigned to that room, still he may have been in it in company with others who did occupy it"—

and the writer gives the names of four men to whom the room was assigned on the 10th and two on the 29th, and offers to furnish "a list of the persons occupying the room in question for a long time preceding the above date."

The relic was not presented to the War Department until after the lapse of fourteen years—December 26, 1879—when it was accompanied by a letter from Miss McHenry from Philadelphia in which she states that she "received it" from Mr. Taylor, "the proprietor of the

McHenry House" "towards the end of April, 1865" and that she had had it in her possession ever since. Her statement that Booth registered at the hotel on the thirteenth of August, 1864, is obviously hearsay and cannot prevail over the positive testimony of the cashier. (See typewritten copy of Miss McHenry's letter pasted on back of relic.)

The story of a poison plot originated from two sources—one the "Selby" letter in which occurs the sentence: "The cup failed us once and might again"; the other, a circumstance stated by Mr. Mason as follows:

"At the same time" (i.e., August, 1864) "David E. Herold was a drug clerk in the establishment of Mr. William S. Thompson, Fifteenth Street and Pennsylvania Avenue, near the White House, where the President was in the habit of having his prescriptions compounded"—of which it suffices to say that, so far from being at the same time with the window-pane incident, Herold's term of service, according to his employer's testimony on the Surratt Trial (pages 510, 517), ended on the 4th of July, 1863—more than a year before; and during that time he put up but one article for the President and that was a small vial of castor oil. Another druggist, whose shop was far away from the White House, on Eighth Street, East, in whose employ the young man was for eleven months from October, 1863, was called on the Conspiracy Trial and testified to the character of his former clerk; but no allusion to the clerkship was made by the prosecution. (Pitman, 96.)

The "Selby" letter, signed Charles Selby and addressed to "Dear Louis (not "Lewis," as Mr. Mason has it) and having no date, together with the note enclosed, in a female hand, dated "St. Louis, October 21, 1864," addressed to "Louis" as "Dearest Husband" and signed "Leenea," was picked up by a woman in a street car in New York in November, 1864; being dropped in an exchange of letters between two men, one of whom was disguised by a false beard. She took the letter and note in their envelope to General Scott, who told her General Butler had left that morning. She then gave them to General Dix, who transmitted them to the War Department on Thursday the 17th of November, 1864, stating that "the party who dropped the letter was heard to say he would start for Washington Friday night." (Pitman, 41.) General Butler was ordered to leave New York with his troops on the 11th of November (Friday), but on his own application was permitted to remain until Monday the 14th (*id.*). The letter and note were put in evidence on the Conspiracy Trial (Poore, I, 27, 28), and the woman

testified that the disguised man's "face was the same" as that of a photograph of Booth shown her, and that the man had "a scar on his right cheek" "something like a bite near the jawbone." He said he would leave Washington the day after to-morrow. According to the letter, the lot had fallen upon "Louis" to be "the Charlotte Corday of the nineteenth century." "Abe must die and now." The writer was on his way to Detroit and the West.

It appeared in proof that Booth left Washington by an early train on Friday the 11th and returned on Monday the 14th in the early part of the evening; so that it would be difficult for him to have been in a street car in New York on Monday. (See *N. Y. Herald* of Tuesday, 15th, for Butler's order.)

Surgeon-General Barnes, who performed the postmortem examination of Booth's body, testified that there was a "scar upon the large muscle of the neck three inches below the ear"; and Dr. May, who was not called on this trial, testified on the Surratt Trial that the removal of a tumor by himself had caused the scar which was on the "back of the neck a little to one side." (S. T., 270.)

It was claimed on the Conspiracy Trial that the Selby letter was written to Booth under the name of Louis by some unknown person, which was a natural inference provided Booth was the person who dropped it. (See argument of Bingham, Pitman, 381, 382.) But, by the date of the Surratt Trial, that hypothesis had been discarded. Booth was now the writer of the letter. An expert from the telegraph office of the War Department testified, from two telegrams signed "J. Wilkes Booth," that the letter, which he considered to be "in a disguised hand," was in the handwriting of the deceased actor. (Bates' testimony, S. T., 506-9.) And Payne was the "Louis" who was to be the Charlotte Corday—the husband of the heart-broken Leenea of St. Louis. (Argument of District Attorney on S. T., 1099; argument of Pierrepont, 1306.)

Payne, at the date of the note from "Leenea," was twenty years of age (born in 1845); had been in the Confederate service since he was sixteen until he was taken prisoner at Gettysburg, July 3, 1863; rejoined the Confederate army in October of that year and remained in the service until January 1, 1865, when he took the oath of allegiance to the United States under the name of Lewis Payne. (See testimony compiled against Payne in Pitman 154 *et seq.*, and the argument of W. E. Doster,

his counsel, *id.*, 308, 310.) That he had a wife and child was never heard of until the Surratt Trial or that he had ever been in St. Louis.

## NOTE III. (pp. 12, 37)

## COPY OF ARNOLD'S LETTER TO ME

Ward D, Johns Hopkins Hospital,  
Baltimore,

MR. D. M. DEWITT,

Oct. 13, 1904.

Dear Sir:

Yours of the 12th at hand. As I will be operated on to-morrow I hasten to reply, giving you from memory all the knowledge I possess concerning your questions. The *American* having copyrighted my article as published, it became their sole right, hence I could not furnish you with a copy of the same even had I one, without their sanction for publication. Booth's first mention of the plot to capture A. Lincoln and convey him South to be held as an hostage for the exchange of prisoners was in the month of August, 1864, at Barnum's Hotel, then located at the corner of Fayette and Calvert Streets. O'Laughlin, a friend of his youth, was also present and after conversing some time over the subject, we both engaged to enter the enterprise. Wiechmann never was known to me nor did I ever see him until the trial, nor were any of those connected in the plot ever known, outside of J. H. Surratt under the name of Cole, until 17th of March, 1865, when I was introduced to them at a meeting and the only one ever held, on the 17th March at Gatier's Saloon, Penn. Ave., Washington. A few days after about 20th March or thereabouts it was determined to intercept Lincoln at the Soldiers' Home, 7th Street. All rode out but in pairs, O'Laughlin and myself—Atzerodt and Payne—Booth and Surratt, Herold having been sent to T. B. or Surrattsville to convey a box containing carbines. I never met, never knew there was such a person as Mrs. Surratt living in Washington or even in the State of Maryland. The first I knew of her [was] when her name appeared in the Charge and Specifications before the Military Court. If any started from Mrs. Surratt's, both myself and O'Laughlin were perfectly ignorant in the matter. During my confinement with Mudd and Spangler at the Dry Tortugas, both denied any connection with Booth. Such a man as Spangler I am satisfied would never have been taken into his confidence. Whether Booth in his visits to that portion of Maryland ever made known his object, of course I cannot state. Those composing the better class of

people were all in favor of the South, being slave owners and if he mentioned the fact both he and they kept their own councils.

The following were the entire party connected with the abduction plot, viz.: Booth, Payne, Atzerodt, Herold, O'Laughlin and myself. The plot was abandoned on or about the 20th March, 1865. I never saw Booth after the 31st March, nor any of the others connected therewith and was following my legitimate calling, bookkeeper at sutler's store at Fortress Monroe, a law-abiding citizen—when Booth the madman thro' emotional insanity committed his diabolical crime thro' which he brought shame and suffering upon the innocent.

I trust the information extended will help in establishing a truthful history in regard to that affair. Be just both to the living as well as the dead.

Very respectfully

SAML. B. ARNOLD.

The *Baltimore American* in 1902 published in several issues a work of Arnold's, entitled "The Lincoln Plot" (copyrighted), republished at the same time by the *New York Sun*. The files of the former newspaper containing the series were burned in the great fire.

On the 9th, 10th or 12th of September, 1864, Arnold received a letter containing a fifty dollar or twenty dollar note, probably from Booth.

(Newman's testimony, C. T., Poore, I, 423; Pitman, 239.)

Arnold died in the above-named hospital in 1906.

NOTE IV. (p. 14)

(BUNKER'S MEM.)

J. W. B. was not at National Hotel during the month of October. He arrived there Nov. 9; occupied Room 20; left on early train, morning of 11th.

Arrived again Nov. 14 and left on 16th.

His next arrival was Dec. 12; left Dec. 17, morning train. Arrived again Dec. 22; left 24th 11:15 train. Arrived again Dec. 31; left Jan. 10, 1865, 7:30 P.M. Arrived again Jan. 12; left 28th 7:30 P.M. train; occupied 50½.

Arrived again Feb. 22; occupied Room 231 in company with John P. H. Wentworth and John McCullough. . . . Left Feb. 28, 8:15 A.M. train, closing his account to date, inclusive. His name does not appear on the register, but another room is assigned him; and his account commences March 1st without any entry upon the register of that date. 2nd, 3rd and 4th he is called at 8 A.M. 21st March pays \$50 on

account and left on 7:30 P.M. train. Arrived at March 25; room 231; to tea; and left April 1st on an afternoon train.

Arrived again April 8th; room 228. (Poore I, 32.)

NOTE V. (pp. 18, 26)

The *Evening Star* (Washington, D. C.) of April 20, 1865, published the letter with its history (taken from the *Philadelphia Enquirer*):

“The following verbatim copy of a letter, in writing, which is the hand-writing of John Wilkes Booth, has been furnished by Hon. Wm. Milward, U. S. Marshal of the Eastern District of Pennsylvania. It was handed over to that officer by John S. Clarke, who is a brother-in-law of Mr. Booth. The history connected with it is somewhat peculiar. In November, 1864, the paper was deposited with Mr. Clarke by Booth, in a sealed envelope, ‘for safe keeping,’ Mr. Clarke being ignorant of the contents. In January last, Booth called at Mr. Clarke’s house, asked for the package, and it was given him. It is now supposed that he took out the paper and added his signature, which appears to be in a different ink from that used in the body of the letter and also from the language employed could not have been put to it originally. Afterwards he returned the package to Mr. Clarke again for safe keeping, sealed and bearing the superscription ‘J. Wilkes Booth.’ The enclosure was preserved by the family without suspicion of its nature. After the afflicting information of the assassination of the President, which came upon the family of Mr. Clarke with crushing force, it was considered proper to open the envelope. There were found in it the following paper, with some seven-thirty United States bonds, and certificates of shares in oil companies. Mr. Clarke promptly handed over the paper to Marshal Milward, in whose custody it now remains. From a perusal of this paper it seems to have been prepared by Booth as a vindication of some desperate act which he had in contemplation; and from the language used it is probable that it was a plot to abduct the President and carry him off to Virginia. . . . The letter is as follows:

—————, 1864

*My Dear Sir:*

You may use this as you think best. But as *some* may wish to know *when*, *who*, and *why* as I know not *how* to direct, I give it (in the words of your master)—‘To whom it may concern.’

Right or wrong, God judge me, not man. For be my motive good or bad, of one thing I am sure, the lasting condemnation of the North.

I love peace more than life. Have loved the Union beyond expression. For four years have I waited, hoped and prayed for the dark clouds to break and for a restoration of our former sunshine. To wait longer would be a crime. All hope for peace is dead. My prayers have proved as idle as my hopes. God's will be done. I go to see and share the bitter end.

I have ever held the South were right. The very nomination of Abraham Lincoln, four years ago, spoke plainly war, war, upon southern rights and institutions. His election proved it. 'Await an overt act.' Yes, till you are bound and plundered. What folly. The South was wise. Who thinks of argument or pastime when the finger of his enemy presses the trigger? In a *foreign* war, I, too, could say 'country, right or wrong.' But in a struggle *such as ours* (where the brother tries to pierce the brother's heart) for God's sake choose the right. When a country like this spurns *justice* from her side, she forfeits the allegiance of every honest freeman, and should leave him, untrammelled by any fealty soever, to act as his conscience may approve. People of the North, to hate tyranny, to love liberty and justice, to strike at wrong and oppression, was the teaching of our fathers. The study of our early history will not let me forget it, and may it never.

The country was formed for the white, not for the black man. And looking upon *African slavery* from the same standpoint held by the noble framers of our constitution, I, for one, have ever considered it one of the greatest blessings (both for themselves and us) that God ever bestowed upon a favored nation. Witness heretofore our wealth and power; witness their elevation and enlightenment above their race elsewhere. I have lived among it most of my life, and have seen *less* harsh treatment from master to man than I have beheld in the North from father to son. Yet, Heaven knows, *no one* would be willing to do *more* for the negro race than I, could I but see the way to *still better* their condition.

But Lincoln's policy is only preparing a way for their total annihilation. The South *are not, nor have they been fighting* for the continuation of slavery. The first battle of Bull Run did away with that idea. Their causes *since* for war have been *as noble and greater far than those that urged our fathers on*. Even should we allow they were wrong at the beginning of this contest, *cruelty and injustice* have made the wrong become the right, and they stand now (before the wonder and admiration of the world) as a noble band of patriotic heroes. Hereafter, reading of their deeds, Thermopolea will be forgotten.

When I aided in the capture and execution of John Brown (who was a murderer on our Western border and who was fairly tried and convicted, before an impartial judge and jury, of treason, and who, by the way, has since been made a god) I was proud of my little share in the transaction, for I deemed it my duty that I was helping our common country to perform an act of justice. But what was a crime in poor John Brown is now considered (by themselves) as the greatest and only virtue of the whole Republican party. Strange transmigration. *Vice* so becomes a *virtue*, simply because more indulged in. I thought then as now, that the Abolitionists were *the only traitors* in the land, and that the entire party deserved the fate of poor John Brown, not because they wish to abolish slavery, but on account of the means they have ever endeavored to use to effect that abolition. If Brown were living I doubt whether he *himself* would set slavery against the Union. Most or many in the North do, and openly curse the Union, if the South are to return and retain a *single right* guaranteed to them by every tie which we once revered as *sacred*.

The South can make no choice. It is either extermination or slavery for *themselves* (worse than death) to draw from. I know *my* choice.

I have also studied hard to discover upon what grounds the right of a state to secede has been denied, when our very name United States, and the declaration of independence *both* provide for secession.

But there is no time for words. I write in haste. I know how foolish I shall be deemed for undertaking such a step as this, where, on the one side, I have many friends and everything to make me happy, where my profession *alone* has gained me an income of more than twenty thousand dollars a year, and where my great personal ambition in my profession has such a great field for labor. On the other hand, the South have never bestowed upon me one kind word; a place now where I have no friends, except beneath the sod; a place where I must either become a private soldier or a beggar. To give up all of the *former* for the *latter*, *besides* my mother and my sisters, whom I love so dearly (although they so widely differ with me in opinion) seems insane; but God is my judge. I love *justice* more than I do a country that disowns it, more than fame and wealth; more (Heaven pardon me if wrong), more than a happy home.

I have never been upon a battle field; but O my countrymen, could you all see the *reality* or effects of this horrid war, as I have seen them (in *every State*, save Virginia) I know you would think like me, and would pray the Almighty to create in the Northern mind a *sense* of

*right and justice* (even should it possess no seasoning of mercy) and that he would dry up the sea of blood between us, which is daily growing wider. Alas, poor country. Is she to meet her threatened doom? Four years ago I would have given a thousand lives to see her remain (as I had always known her) powerful and unbroken. And even now I would hold my life as naught to see her what she was. O, my friends, if the fearful scenes of the past four years had never been enacted, or if what has been was a frightful dream, from which we could now awake, with what overflowing hearts could we bless our God and pray for His continued favor. How I have loved the *old flag* can never now be known. A few years since and the entire world could boast of *none* so pure and spotless. But I have of late been seeing and hearing of the *bloody* deeds of which she has been *made the emblem*, and would shudder to think how changed she has grown. O, how I have longed to see her break from the mist of blood that circles round her folds, spoiling her beauty and tarnishing her honor. But no, day by day, has she been dragged deeper and deeper into cruelty and oppression, till now (in my eyes) her once bright red stripes look like *bloody gashes*, on the face of Heaven. I look now upon my early admiration of her glories as a dream. My love, (as things stand to-day) is for the South alone. Nor do I deem it a dishonor in attempting to make for her a prisoner of this man to whom she owes so much of misery. If success attends me, I go penniless to her side. They say she has found that "last ditch" which the North has so long derided, and been endeavoring to force her in, forgetting they are our brothers, and that it's impolitic to goad on an enemy to madness. Should I reach her in safety and find it true, I will proudly beg permission to triumph or die in that same "ditch" by her side.

A confederate doing duty upon his own responsibility.

J. WILKES BOOTH."

#### NOTE VI. (pp. 32, 34, 37)

##### SEE LETTER OF ARNOLD GIVEN IN NOTE III

That the date of the meeting was Friday, the 17th of March, further appears from the fact that, according to every witness on the subject, even Wiechmann who misdates the attempt as of the 16th, the meeting was held on the same night that Payne attended the theatre with Surratt, and met Booth in the box; and that this was *Friday* and not *Wednesday* (as Wiechmann puts it) is rendered certain by the testimony of Miss Fitzpatrick who explicitly states that the morning after she had been at

the theatre she went to Baltimore and was absent a week. See Poore, II, 89, 185. Also, Arnold's articles in *Baltimore American*, referred to at foot of Note III, *supra*, wherein he states that:

"About 2 o'clock (March 17, 1865) Booth and Herold met O'Laughlin and myself. Booth stated that he was told that the President was going to attend a theatrical performance out on Seventh Street, at a soldiers' encampment or hospital at the outer edge of the city. Booth made inquiries at the Soldiers' Home and learned the President was not there."

And also that instead of Lincoln attending, *Chase* went at President's request—obviously a mistake as Chase was no longer a member of the cabinet.

The date of the attempt to capture is fixed positively for Monday, the 20th, by the testimony of Wm. L. Arnold who saw his brother on the coach leaving for Hookstown from Baltimore on the 21st (see Poore, II, 518; *cf.* testimony of Minnie Pole in Poore, III, 352; Pitman, 241), and by the departure of Lincoln for the front.

The *N. Y. Herald* of Thursday, March 23, 1865, announces that Mr. Lincoln and Mrs. Lincoln, with "Tad," went on the River Queen from Washington to City Point on Wednesday, 22nd, at noon.

a. The unreliability of Wiehmann as to dates is remarkable. On comparing his testimony in the two trials, it is apparent that, with all his study and painstaking, he is often at sea.

#### NOTE VII. (pp. 37, 61)

##### ARNOLD'S LETTER TO BOOTH

Poore, I, 420.

Hookstown, Balto. Co., March 27, 1865.

*Dear John:*

Was business so important that you could not remain in Baltimore till I saw you? I came in as soon as I could, but found you had gone to W—n. I called to see Mike, but learned from his mother he had gone out with you and had not returned. I concluded, therefore, that he had gone with you. How inconsiderate you have been! When I left you, you stated we would not meet in a month or so; therefore I made application for employment, an answer to which I shall receive during the week. I told my parents I had ceased with you. Can I then, under existing circumstances, come as you request? You know full well that the G—t suspicions something is going on there; therefore, the under-

taking is becoming more complicated. Why not, for the present, desist for various reasons, which if you look into, you can readily see without my making any mention thereof. You nor any one can censure me for my present course. You have been its cause; for how can I come after telling them I have left you? Suspicion rests upon me now from my whole family and even parties in the county. I will be compelled to leave home anyhow, and how soon I care not.

Nobody, no not one, was more in for the enterprise than myself, and to-day would be there, had you not done as you have—by this I mean manner of proceeding. I am as you well know, in need. I am, you may say, in rags; whereas to-day I ought to be well clothed. I do not feel right stalking about with means and more from appearances a beggar. I feel my dependence; but even all this would and was forgotten; for I was one with you. Time more propitious will arrive yet. Do not act rashly or in haste. I would prefer your first query “Go and see how it will be taken in R—d,” and ere long I shall be better prepared to be again with you. I dislike writing; would sooner verbally make known my views; yet your non-writing causes me thus to proceed.

Do not in anger peruse this: weigh all I have said; and as a rational man and a *friend*, you cannot censure or upbraid my conduct. I sincerely trust this, nor aught else that shall or may occur, will ever be an obstacle to obliterate our former friendship and attachment. Write me to Balto., as I expect to be in about Wednesday or Thursday; or, if you can possibly come on, I will Tuesday meet you in Balto. at B—.

Ever I subscribe myself, your friend,

SAM.

Extract from Stanton's telegram to Dix, at 7:10 Saturday, 15 April:

“It appears from papers found in Booth's trunk that the murder was planned before the 4th of March, but fell through then because the accomplice backed out until ‘Richmond could be heard from.’ ”

## NOTE TO CHAPTER II

### NOTE I. (pp. 31, 39)

The testimony, given on both the Conspiracy and the Surratt trials, leaves no room for the incident of the arrest of Booth in the rotunda on the day of Lincoln's second inauguration, related by Oldroyd in his

book on *The Assassination*, pages 216, 217. (Compare testimony of Chester on C. T. and of Wiechmann on S. T.)

The remark quoted in text is enough of itself to dispose of the story. And why was not the policeman, who "probably saved" the President's life, called as a witness on the first trial? If it be answered that the officer had not yet recognized the party he arrested as the assassin, why did he not give his testimony on the Surratt Trial, especially as he had been promoted for his gallant service? And where were the makers of the dozen or more affidavits which form "part of the 'Oldroyd Lincoln Memorial Collection'?"?

### NOTES TO CHAPTER III

#### NOTE I. (pp. 59, 198)

In the *New York Sun* of April 16, 1905, appeared a statement of "Corporal" James Tanner who at the time of the assassination was a clerk in the Ordinance Bureau and, having a knowledge of shorthand, employed his evenings in taking down dictation from the reporters of the Senate. Boarding in the house next to the Peterson house on the north, he was in the death chamber when the President passed away. At the hour the fatal shot was fired he was at Grover's theatre; and he quotes from a letter, written to his mother the day after, the narrative of what followed:

"Shortly after 10 o'clock, while in the midst of a scene, the entrance door of Grover's was thrown open and a man shouted: 'President Lincoln has been shot in his private box at Ford's! Turn out!' Instantly all was confusion. I cried out: 'It is a ruse of the pickpockets! Sit down!' Most of the audience agreed to this and took their seats. The son of one of the actors, who had recited a patriotic poem on the stage, came from behind the scenes and announced that the terrible news was too true, and the audience dispersed. My friend and myself went up to Willard's to learn what we could. We were still more horror stricken on coming from the theatre to hear it said that Secretary Seward had had his throat cut in his bed at home. We could learn nothing at Willard's hotel, we got on the cars and went down to Tenth Street and came up to my boarding house. The President had been removed from his box at the theatre to a house across the street which adjoins this. The crowd was very great, and yet what excitement there was! Any

one whispering a word in justification of the deed in the least degree would have been torn to pieces in a moment."

He continues:

"On my statement to the officer in command of the guard that I lived in the house next door, I was passed through the lines and went up to my rooms. The parlor and bedroom I occupied comprised the second story front. There was a balcony there, and I found my rooms and the balcony crowded with the other residents of the house. Albert Daggett, the late postal card contractor, was at the time a clerk in the State Department and boarded in the same house. Daggett was out on the balcony when Gen. C. C. Augur came out of the Peterson house and asked if there was any one present who could write shorthand. Daggett told him there was a young man inside (meaning myself), who could do it, and Gen. Augur told him to ask me to come down, as they wanted me. I came down at once and entered the Peterson house.

"Gen. Augur conducted me into the rear parlor, where I found Secretary Stanton, sitting on one side of the small library table and Chief Justice Carter of the Supreme Court of the District at the end. They had started in to take what testimony they could regarding the assassination, having some one write it out in longhand. This had proved unsatisfactory. I took a seat opposite the Secretary and commenced to take down the testimony. Somewhere, stowed away in my boxes, I have the original shorthand notes which I made on that table, and the longhand copy which I wrote out before leaving the Peterson house. We had Harry Hawk, who had been on the stage; Laura Keene and various others before us. No one said positively that the assassin was John Wilkes Booth, but all thought it was he. It was evident that the horror of the crime held them back. They seemed to hate to think that one they had known at all could be guilty of such an awful crime. Many distinguished people came in during the night. Our work was often interrupted by reports coming in to Secretary Stanton and more often interrupted by him when he halted the testimony to give orders. Through all that awful night Stanton was the one man of steel.

"I finished transcribing my notes at 6:45 A.M. and then passed back to the room in the L where the President was dying."

Compare with Nicolay and Hay, "Life of Lincoln," in *Century* for January, 1890.

## NOTE II. (p. 62)

Even on a matter so insusceptible, one would think, of mistake as the course of the ball, there is discrepancy in the testimony.

The only witness concerning the autopsy sworn on the Conspiracy Trial was Robert K. Stone, the family physician who reached the patient shortly after he was laid on the bed.

He testifies (Poore, I, 249; Pitman, 81):

"The next day, previous to the process of embalmment, with Dr. Curtis and Dr. Woodward of the army and in the presence also of Surgeon-General Barnes, the examination was made. We traced the wound through the brain; and the ball was found in the anterior part of the same side of the brain, the left side."

On the other hand, Barnes was the first witness on the Surratt Trial and the only one as to proof of death. (S. T., 121-3.) He testified that "the ball entered the skull to the left of the middle line of the head and below the line of the ear. It ranged forward and upward toward the right eye, lodging within half an inch of that organ." The *post mortem* was made by Dr. Woodward, his assistant, by his orders. Dr. Stone was present. The ball "was found . . . behind the orbit of the right eye and buried in the brain." Baker (*History of U. S. Secret Service*, 468) says "right eye." Oldroyd, 41, the same.

"Life of Lincoln" by Nicolay and Hay (in *Century Magazine* for January, 1890), left eye.

If Ferguson in his testimony on the Conspiracy Trial is correct in his statement of the position of the President at the moment the shot was fired, this shows that the course of the ball must have been diagonal and that Barnes is correct. (See Poore, 190-1; S. T., 129. See Dr. Abbott's minutes of last hours in Oldroyd, 32, and in Baker, 467. See also statement of Maunsell B. Field, asst. sec. of state, in Baker, 468-470.)

I have seen it stated somewhere that the President was conscious at moments after the shot, but I have lost the reference.

## NOTE III. (pp. 65, 201)

## ON MRS. SURRATT'S NON-RECOGNITION OF PAYNE

The version of the occurrences at Mrs. Surratt's on the night of her arrest and the coming of Payne embodied in the text, is taken from the testimony of Richard C. Morgan, the first witness sworn on the Con-

spiracy Trial as to this branch of the case by the judge advocate. (See Poore, II, 9.) Morgan was acting as chief clerk under Colonel Olcot, one of the members of the special commission sitting at General Augur's headquarters, who instructed him to go to Mrs. Surratt's and superintend the seizing of papers and the arrest of the inmates. He knows nothing of a confrontation of Payne and Mrs. Surratt; on the contrary, he states that she was in Payne's presence only when passing out of the door and "no conversation occurred." He also states that Payne was interrogated after Mrs. S. had gone.

The confrontation and Mrs. S.'s solemn asseveration that she knew not the man first appear in the testimony of Major Henry Warren Smith on the same trial. (Poore II, 14.) He claimed to have been in full charge of the party, classing Morgan as one of his subordinates. According to his version, he, instead of Morgan, conducted the whole business and, after interrogating Payne, called Mrs. Surratt from the parlor and put the question to her to which she made so emphatic a reply.

The two versions are absolutely irreconcilable. If Morgan told the truth, the incident, upon which great stress has been laid as showing the complicity of Mrs. Surratt, never took place. It is true that Captain Wermerskirch corroborates Smith, but, on the other hand, Miss Fitzpatrick swears she neither heard nor saw anything of the kind; while the other officers present, two of whom heard the remark made by Mrs. Surratt in passing out which Morgan failed to catch, were not sworn.

Smith was contending for first place in the capture with an eye to a lion's share of the reward. A simple non-recognition, such as might be deduced from Morgan's testimony, would have furnished but little food for suspicion and on this account was not enough for the prosecution. A solemn and impressive form must be given to the denial to make it tell with deadly effect. And that Smith was just the man to do it is apparent from his testimony on the Surratt Trial. There Morgan, notwithstanding he strives to reconcile his testimony as far as possible to that of his competitor for public favor, is obliged to stick substantially to his former version. But Smith is more dramatic than ever—laying on the colors and deepening the shades, especially on the points where he is most at war with his brother officer. On this trial, also, the prosecution fails to produce the subordinates present whose testimony might have placed the point in dispute beyond controversy.

One thing is certain; so solemn a performance as that narrated by Major Smith could not have been enacted in that lighted hall at that midnight hour and have escaped the notice of Morgan; and Morgan, if he witnessed it, had every motive to relate it and none to conceal it.

NOTE IV. (p. 80)

This missive was first brought to light in May, 1867, before the impeachment committee. Holt, who produced the diary, said nothing of it, nor Conger, who testified that the book was in his possession from the time he took it from Booth's body until he delivered it to Stanton. (Imp. Inv., 286, 324, 329-331.) Lieutenant Baker, however, testified that, about ten days after the capture, having been sent by Stanton in search of further information, he ascertained that Booth while at Lucas' cabin wrote something on one of the leaves of his diary, tore the leaf out, enclosed some money in it and sent it to Stewart in the morning; whereupon Baker went to the doctor's and got the note—Mrs. Stewart interposing to prevent the detective taking it and finally tearing off the address. Baker brought the note to General Baker, who took it to the War Department where the leaf on which it was written was compared with those in the diary and so found to have come from the book. (*Id.*, 484.)

Major Eckert produced the note from a package in the War Department and it read as given in the text; and he testified that the doctor stated "that this paper came to his house sealed up." It was pinned and bears the marks of the pin used in fastening it. The address was on the paper itself, and the money was rolled up in it (*id.* 676-7).

There was another version, still, in the diary itself, with a part of the writing torn off and the sum sent stated to be five dollars—showing that Booth wrote first a note purporting to enclose \$5; and then, concluding to reduce the amount to \$2.50, wrote another which was sent, the original being left in the book.

This latter was introduced on the Surratt Trial (p. 402), and may be collated with the other. The most material variation, other than the money statement, is that it has no signature, date or address.

Lieutenant Baker was sworn on that trial (320-1) but makes no allusion to the note produced although it was mutilated as he describes.

NOTE V. (p. 91)

ON QUESTION: DID BOOTH KILL HIMSELF?

The exact truth concerning the particulars of the capture of Booth and Herold cannot be ascertained because of the contradictory char-

acter of the testimony of the principal witnesses—due to the fierce strife waged over the immense reward offered by the government. Of the persons present—at least thirty in number—we have the testimony of but five—Everton J. Conger and Luther B. Baker, the two detectives whom General La Fayette C. Paker, the planner of the expedition, put in command; Edward P. Doherty, the captain of the squad of cavalry detailed for the service; Boston Corbett, the first sergeant of the company; and John W. Garrett, the son of the owner of the place where the fugitives were brought to bay. Conger, Doherty and Corbett were sworn before the military commission which met less than two weeks after the capture; Doherty's testimony being directed by the judge advocate principally to the surrender of Herold, for which the captain claimed the sole credit, and Corbett's to the circumstances leading up to the firing of his shot. Conger was the witness the prosecution relied on for the particulars of the pursuit and capture; L. B. Baker, whose deposition had been taken by Judge Holt immediately on his arrival with the body on board of the monitor, though he was in attendance, not being called.

In December, 1865, Conger and L. B. Baker made a verified joint report to the Secretary of War, which was transmitted, with the report of their chief, and is contained in the *History of the United States Secret Service* published by the latter officer, at page 532. In it they refer to statements taken by them from the fisherman, Rollins, from the two young Garretts, and also the deposition of Baker taken by Judge Holt—all on file in the War Office, but never published. Conger and Baker gave testimony before the judiciary committee of the House of Representatives on the Impeachment Investigation of 1867, and on the Surratt Trial occurring subsequently in the same year, but Doherty and Corbett were sworn on neither proceeding. Garrett was sworn on the Surratt Trial alone.

The feud over the distribution of the rewards had not transpired in public at the date of the military commission, though unmistakable traces of its existence were visible in the pointblank contradictions disfiguring the evidence of Conger and Doherty—both witnesses strenuously contending for primacy in the expedition. But it burst forth in full virulence before the commission appointed by the Secretary of War to hear the claimants, consisting of Judge-advocate Holt and Adjutant-general Townsend—a commission which, while it conceded that the expedition “was originated, planned and generally directed by Col. L. C. Baker,” awarded that irate officer but \$3,000; awarded Conger

4,000; L. B. Baker, \$4,000; and Doherty, \$7,500." The war was then carried before the committee on claims of the House of Representatives, where in the spring of 1866 some startling disclosures were made. Doherty, who claimed that he was in sole command of the party—the two detectives, like his own men, being mere subordinates—was denounced on the floor by the chairman of the committee as having acted as "a downright coward," hiding under a shed and shirking his duty until he was ordered to the rear; his men "lying around under the apple trees and elsewhere," all but six of them refusing to come within thirty feet of the warehouse and sit upon rails placed at that distance by Conger. Corbett, one of the six, the chairman stated was "an insane man" who "forsook his place," "thrust a pistol through a crack and fired it without knowing where the ball was going," because, as he himself said, "Providence directed him to do so." On the other hand, nothing but good was shown or said of Conger. To him was committed the execution of the plan, and to him and his lieutenant was "due the entire credit of capturing the criminal in the warehouse." The chairman pronounced him to be "as brave and gallant a soldier as any who fought in our army." "He was shot twice through the hips and was now dragging a withered limb." Another member spoke of him as "really a noble, high-toned gentleman"—"the active man in the whole affair." Sherman, in the Senate, pointed him out sitting in the gallery, "two wounds upon his body, pale and emaciated, not five dollars in his pocket," "waiting for his pay." The committee gave General Baker \$17,500; Conger the same sum; L. B. Baker, \$5,000; Doherty \$2,500. In the House the main fight was over the amount awarded to the chief of the detective force; and the bill, as passed, to his unutterable disgust, gave him but \$3,750. Conger received \$15,000; Doherty, \$5,250; L. B. Baker, \$3,000; Corbett and the other cavalrymen \$1,653.48 each. (Act approved July 28th, 1866. App. of *Globe*, 1st Sess., 39th Cong., p. 423. Debate, *Globe id.*, 4183-90-1.)

Conger and Baker were the main witnesses on this branch of the case on the Impeachment Investigation and the Surratt Trial—the former was conceded the primacy in the pursuit, the latter dividing it with him in the capture; Garrett, as far as his testimony went, corroborating Baker. Indeed the last-mentioned officer, if we except his cousin, the general, who took no active part in the execution of the plan he conceived and, therefore, in this instance had no opportunity to exhibit his unrivaled powers when under oath—was the most ill-used witness in the

whole proceeding. He undoubtedly—his colleague yielding the palm to him—took the lead from the moment the warehouse was surrounded; parleying with Booth and conducting every movement except the placing of the men and the setting fire to the barn. If we except Corbett, he was the sole witness to Booth's fall. He was the first to catch the fallen man, to twist the pistol out of his clenched hand and consequently to discern whether the condition of the weapon corresponded with the condition of the wound. He took charge of the body until it was delivered to his chief on board of the monitor, and he relates an incident as occurring during this interval which, it must be confessed, strains his credibility to the limit. He tells us that, starting ahead of the cavalcade, alone in the wagon with the darkey driver, he got astray, and, after traveling all day, struck the river three miles above the rendezvous and had to conceal the corpse in the bushes, while (leaving the negro on watch) he drove down the river until he found a boat in which he rowed back and brought the body to the steamboat. Still, on the whole, his two narratives give the most graphic, the clearest and the most intelligent account of the expedition. For some reason he was under the frown of the mighty Bureau of Military Justice. His deposition—the earliest of all—taken by Holt in the hold of the monitor, when wanted before the committee on claims, could not be found. He suspected that he was not called on the Conspiracy Trial because of some "foul play" in favor of Conger and Doherty. His first impression when Booth fell was that Conger shot him; his second, that if Conger shot him "it better not be known." Conger's *first* impression was that Booth shot himself—an impression confirmed by his examination of the wound. His *second* may have been that, if Booth shot himself, "it better not be known" and his colleague may have agreed with him. If so, Corbett relieved them from the necessity of any further deliberation, and neither was ever assured by competent authority that their share of the reward would not be lessened if they discarded policy and declared the truth.

As for Doherty, after he went home with his share of the spoil, we have no record of him for twenty-four years, when, in the January number of the *Century Magazine* for the year 1890, a paper appeared giving an account of the pursuit and death of Booth, signed with his name, in which he claims everything in sight. He it was who obtains from Rollins the information concerning the fugitives. He it was who arrests Jett. He seizes old man Garrett. He parleys with Booth. He catches the falling man when Corbett fires to disable him lest he shoot Doherty.

He ministers to the captive when he revives. He sews up his body in his own blanket, carries it and Herold to Washington and delivers both on board the monitor—in each and every one of which particulars he runs counter to the pointblank testimony of both Conger and Baker, supported as they are by Garrett.

On the whole, a perusal of the testimony that has come down to us gives a sickening sense of the unreliability of witnesses when striving with each other for the biggest share of a large reward. Every one appears unable to resist the temptation to magnify his own exploits at the expense of those of his competitors. In the clouds of dust raised by the ignoble contention, the truth is either obscured beyond recognition or disappears altogether.

And, therefore, the authorities were all the more inexcusable for allowing the matter to rest in such exasperating dubiety.

The rumor of suicide was abroad. The truth of the matter could have been established without difficulty. If Corbett fired the shot, some of his comrades must have witnessed the act; in fact, he swears that one of them was watching him at the moment. Whether he used a carbine or a revolver, is left uncertain. He swears: "I took steady aim on my arm"; which looks like a revolver; Doherty says a carbine. He must have stood at least thirty feet from Booth when he fired.

The autopsy ought to have disclosed the size of the ball and whether it came from a revolver or a carbine; and a proper inspection of the weapons—the one Corbett said he used and the one Baker took from the fallen man—would have settled the question.

*Cf.* testimony of Baker (L. B.) on Imp. Inv. and on Surratt Trial with Conger's on C. T. See Ruggles' narrative in January *Century* (1890) and Doherty's in same magazine. Also *Katy of Catoctin*, 536.\*

\* Lieutenant Baker testified on the Impeachment Investigation (p. 489) that, about two weeks after the death of Booth, the young Garretts came to Washington with an application for damages, "which they wanted me to sign but I refused until I got all the things belonging to Booth which they had." A week or ten days after he went to Garrett's and one of the sons brought him "a piece of Booth's crutch and a haversack." A little boy told him "that Booth gave the opera glass to his sister, Joanna," and Baker told Joanna "she could do one of two things—either produce the opera glass or come with" him "to Washington." Old Garrett then said that the glass was about nine miles off with another daughter of his; and Baker rode over and found it hid in a clothes-chest in the attic. He tells the same story on the Surratt Trial, 321-2.

## NOTES TO CHAPTER IV

## NOTE I. (p. 96)

An article in *Blackwood's Magazine* for April, 1869, entitled "The Out-going and the Incoming President," shows the contemporary foreign view:

"The cruel murder of Mr. Lincoln excited so violent a rage against the defeated South, whose chiefs and leaders were stupidly accused by the War Secretary, Mr. Stanton, of having abetted and instigated it . . . that he (Mr. Johnson) . . . without the slightest warrant accused seven high-minded gentlemen, as innocent of murder as himself, of complicity in the foulest crime of the age."

## NOTE II. (p. 104)

All the principal New York journals state that Mrs. Surratt was ironed about the ankles. The *New York Times* of the 15th of May, 1865, describing the scene at the opening of the court, on the Saturday before, states as to Mrs. Surratt: "An iron bar ten inches long passes from one ankle to another and is attached to an iron band that encircles each leg."

Poore, in his introduction to "The Conspiracy Trial," says: "All the prisoners, *including Mrs. Surratt*, wore anklets connected by short chains, which hamper their walk." General Hunter, as he waited to say until November, 1873, reading in a morning paper the day after the opening of the trial a report that Mrs. Surratt was heavily ironed, "immediately addressed" a note "to the officer in charge to learn if the report was true" and "was assured it was false." But the newspaper statements, although virtually unanimous, called forth no public denial until the fall of 1873. Then, after Holt attacked Andrew Johnson concerning the rumor of the suppression of the petition in favor of Mrs. Surratt, and was himself assailed for "keeping that feeble, wretched woman heavily manacled during her trial," he appealed to General Hartranft—then governor of Pennsylvania—who came forward to his rescue.

Hartranft's denial, having been delayed so long, might not have been conclusive, had not the editor of the *Washington Chronicle* addressed a note to Frederick A. Aiken, one of the counsel of Mrs. Surratt, who settled the question by the averment that she was at no time manacled while in the presence of the court.

See Holt's letter to the *N. Y. Tribune* dated September 9, 1873, published in *Daily Morning Chronicle* of September 12, 1873, containing Hartranft's; Hunter's in *Chronicle* of November 9, 1873; Aiken's in *Chronicle* of September 19.

NOTE III. (p. 110)

General Harris (in 1892) published a book on the assassination of Lincoln [Boston American Citizen Company] of 419 pages, in which he plumes himself upon this attack; representing the counsel, when he found that the court "could not be bluffed," as coming "down from his high horse." The general, at so late a day, is still thoroughly convinced of the guilt of every one of the accused, Jefferson Davis included, of the great conspiracy, not only but of all "the atrocities not embraced in the charge"; still clinging to Sanford Conover in the face of the confession of that criminal, his conviction and imprisonment in the Albany penitentiary, nay, despite his denunciation by Judge Holt.

NOTE IV. (p. 115)

The case was reopened to introduce an advertisement from an Alabama newspaper of December 1, 1864, offering for one million dollars to cause the lives of Lincoln, Seward and Johnson to be taken before the first of March; the author of which was an old lawyer, without a cent to his name, who got up the card as a joke in a moment of intoxication. He was indicted but pardoned by President Johnson on the petition of the Union officers and soldiers in the vicinity of his home, the Free Masons of his district, and the governor and members of the legislature of the reconstructed state. (Imp. Inv., 565-570.)

NOTE V. (p. 120)

The special detective, who first had Lloyd in charge, not being called by the judge advocate, the counsel for Mrs. Surratt sought him out and asked him whether the prisoner implicated Mrs. Surratt in his confession. The officer told him she had not, and repeated his negation in the court room just before he was called to the stand. What was the counsel's astonishment when he testified to the direct contrary! Being called to account for his deception he justified it as follows: "It is a part of my business—I am a detective officer—to gain my object I ob-

tained the confession from Lloyd through strategy. . . . Undoubtedly I told you a lie there, for I thought you had no business to ask me. . . . I told you you might call me into court; and I state here that I did lie to you; but when put on my oath I told the truth.'' (Testimony of Cottingham, Poore, II, 215.)

NOTE VI. (p. 123)

Wiechmann left this visitor unidentified on this trial; but, about a month after, he had become convinced he was Booth (see his affidavit in the Appendix to Pitman), and so testified on the Surratt Trial, on which occasion a colored servant put Surratt in the dining room. (See Chap. VIII on Surratt Trial.)

NOTE VII. (p. 127)

Bingham's recapitulation of the incidents in front of the theatre immediately preceding the tragedy inside, it is well to give, in view of the phase they assumed on the Surratt Trial:

"Booth passes to the street in front of the theatre where on the pavement with other conspirators yet unknown, among them one described as a low-browed villain, he awaits the appointed moment. Booth himself impatient enters the vestibule . . . and asks the time. He is referred to the clock and returns. Presently, as the hour of ten approached, one of his guilty associates called the time; again as the appointed hour draws nigh, he calls the time; and finally when the fatal moment arrives he repeats in a louder tone, 'Ten minutes past ten o'clock.' 'Ten minutes past ten o'clock.' "

This one-sided harangue appears to have been considered by the Bureau as a model of forensic eloquence. The judge advocate appended it to the "Brief Review" of the testimony submitted to the President "because of the full and exhaustive examination of the questions of law and fact to be found therein"; it was circulated by order of the Secretary of War throughout every congressional district in the country that the legal profession might be furnished with information necessary to vindicate the action of the government; it was the subject of the ecstatic eulogy of General Harris, who printed it in full in an appendix to his work.

## NOTES TO CHAPTER V

## NOTE I. (p. 132)

Gardiner in his *History of England* (Vol. I, 314) narrates a somewhat similar incident occurring in the year 1606 in Scotland. King James, through his commissioner and the lords of the council, forced a conviction of treason against six ministers of the kirk from a jury already packed for the purpose but which, under the spell of the address of two of the accused in person, "inclined to brave all threats and to acquit the prisoners."

"They not only tried what could be done by threatening the jury, but they" (the lords of the council) "sent some of their number in" (to the jury room) "to assure them that they would do no harm by convicting them, as the King had no intention of pushing matters to extremes, but only to have the credit of a verdict on his side in order to bring about a pacification."

## NOTE II. (pp. 134, 137)

In the year 1894, while writing a little book on the execution of Mrs. Surratt (now out of print) I went to the judge advocate general's office in Washington and was permitted to make a copy of the record of the findings and the sentences, which I did upon legal-cap paper of the kind used by the draughtsman of the commission, paragraph by paragraph, and sheet by sheet, making it as near as I could with pen and ink a *facsimile*.

The following is a reproduction of the last half-sheet of the record proper, containing the proceedings of the second day and showing the awkward change made by Holt, in the mode of writing thitherto followed, when superscribing the death warrant:

## APPENDIX

[This is first page of half-sheet]

COURT-ROOM, Washington, D. C.  
June 30th, 1865, 10 o'clock A.M.

The Commission met, with closed doors, pursuant to adjournment.

All the members present; also the Judge Advocate and the Assistant Judge Advocates.

The Commission do, therefore, sentence the said Samuel A. Mudd to be imprisoned at hard labor for life, at such place as the President shall direct.

The Commission thereupon adjourned *sine die*.

J. HOLT

D. HUNTER

EXECUTIVE MANSION,  
July 5, 1865.

The foregoing sentences in the cases of David E. Herold, G. A. Atzerodt, Lewis Payne, Michael O'Laughlin, Edward Spangler, Samuel Arnold, Mary E. Surratt and Samuel A. Mudd, are hereby approved, and it is ordered that the sentences of said David E. Herold, G. A. Atzerodt, Lewis Payne, Mary E. Surratt be carried into execution by the proper Military Authority, under the direction of the Secretary of War, on the 7th

[In Holt's  
Hand]

[This is back page of half-sheet]

day of July 1865, between the hours of 10 o'clock A. M. and 2 o'clock P. M. of that day.

It is further ordered, that the prisoners Samuel Arnold, Samuel A. Mudd, Edward Spangler and Michael O'Laughlin be confined at hard labor in the Penitentiary at Albany, New York, during the period designated in their respective sentences.

ANDREW JOHNSON,  
President.

[In Holt's  
Hand]

[In Johnson's  
Hand]

## NOTE III. (pp. 136-7, 249)

In a paper read to Loyal Legion, April, 1889 (printed in appendix to Harris' *Assassination*), General Burnett says:

"Judge Holt came directly to Mr. Stanton's office in the War Department. I happened to be with Mr. Stanton as Judge Holt came in. After greetings, the latter remarked, 'I have just come from a conference with the President over the proceedings of the military commission.' 'Well,' said Mr. Stanton, 'what has he done?' 'He has approved the findings and sentence of the court,' replied Judge Holt. 'What did he say about the recommendation of mercy of Mrs. Surratt?' next inquired Mr. Stanton. 'He said,' answered Judge Holt, 'that she must be punished with the rest; that no reasons were given for his interposition by those asking for clemency, in her case, except age and sex. He said her sex furnished no good ground for his interfering; that women and men should learn that if women committed crimes they would be punished; that if they entered into conspiracies to assassinate they must suffer the penalty; that were this not so, hereafter conspirators and assassins would use women as their instruments; it would be mercy to womankind to let Mrs. Surratt suffer the penalty of her crime.' After making known to Mr. Stanton that the President had fixed Friday the 7th as the day of execution, Judge Holt left."

Burnett adds that he does not give the exact words but the substance, which of course is all he could do after the lapse of twenty-four years.

Ekin recalls that Holt told him the President said in substance (see his letter to Holt in *Refutation*):

"There was no class in the South more violent in the expression and practice of treasonable sentiments than the rebel women; that he, by his residence in that section of the country, had been enabled better to judge of and appreciate and . . . was better informed as to the disloyalty of such women than the members of the commission could be, and that he . . . considered that the interests of the country demanded that an example should be made," etc.

(Compare versions given by Harlan and by A. J. himself of what was said on this subject.)

## NOTE IV. (p. 139)

See Harlan's letter in Holt's *Vindication*. Harlan does not specify which of the "two eminent statesmen"—Seward or Stanton—was the

author of this memorable utterance; and Burnett in his paper referred to above infers from the language that it was Seward. But in all probability, notwithstanding Harlan's recollection, Seward was not present and it is certain that if present he would have shrunk from taking so prominent a part. At this date the victim of Payne had not recovered from his wounds, and according to Speed (Imp. Inv., 806) he was sick in July. His wife died on the twenty-first of June and his son Frederick was still in a dangerous condition. He himself subsequently testified: "Having been a sufferer in that business, the subject would be a delicate one for me to pursue without seeming to be overzealous or demonstrative." (Imp. Inv., 380.) Besides, such a deliverance was altogether alien to the easy-going disposition of Seward, while it was eminently characteristic of Stanton and moreover in direct furtherance of his purpose.

## NOTES TO CHAPTER VI

### NOTE I. (p. 143)

A judge in Baltimore during the progress of the trial charged the grand jury that "persons exercising such unlawful jurisdiction are liable to indictment"; and so eminent a jurist as the late Rufus W. Peckham told a grand jury in New York City that "grave doubts, to say the least, exist in the minds of intelligent men, as to the constitutional right of the Military Commission at Washington to sit in judgment upon the prisoners now on trial. . . . Thoughtful men feel aggrieved that such a commission should be established in this free country, when the war is over, and when the common law courts are open and accessible." (Argument of Reverdy Johnson, Pitman, 262.)

### NOTE II. (p. 160)

Chase was appointed chief justice December, 1864, and took his seat on the thirteenth. (2 Wall. U. S. Mem. *ad finem*.) Yet he refused to hold court in the late capital of the Confederacy until every vestige of martial law was cleared from the soil of Virginia; thereby laying down the true distinction between the case of a loyal district and the case of a subjugated state. (See his testimony in Imp. Inv., 544.)

## NOTE TO CHAPTER VII

## NOTE I. (p. 173)

Holt's report to the Secretary of War on the case of Clay still relies on this character of testimony; quoting with approbation Montgomery's sworn statement that he had seen Payne in Toronto in the winter of 1865-6 talking with Clay (Pitman, 24), a statement absurdly false. (See *Belle of the Fifties* by Mrs. Clay, 320-1.)

Holt had due notice beforehand of Conover's character. See *Belle of the Fifties* for letter of Rev. Stuart Robinson of June, 1865.

Thaddeus Stevens related how Holt "showed him the evidence upon which the President's proclamation was issued." Whereupon "he refused to give the thing any support" and told that gentleman "the evidence was insufficient in itself and incredible"; adding, "these are no friends of mine. . . . But I know these men, sir. They are gentlemen and incapable of being assassins." (See note to Rhodes' *Hist.*, V, 158.)

## NOTES TO CHAPTER VIII

## NOTE I. (p. 199)

The footsteps he heard overhead while in the dining room after his return from Surrattsville on Friday, were shown to have been the footsteps of a caller on Anna Surratt who herself answered the bell; and the ladies of the household noticed nothing unusual in the demeanor of Mrs. Surratt on that evening and failed to hear her invoke the prayers of her pious boarder. And the appointment for that evening that the affidavit makes her so anxious to meet must have been forgotten, for she started to go to church with one of her lady boarders and had she not been turned back by the inclemency of the weather she would not have been in the parlor that night at all. (See S. T., 689.)

## NOTE II. (p. 200)

For example, the scene in the parlor on the fatal Friday night when, in his affidavit, he describes Mrs. Surratt, at the same hour that Booth was about his bloody work, as "nervous and agitated," he now further embellishes by adding that with prayer beads in her hand she kept walking to and fro, and asking him "to pray for her intentions."

It was upon this trial that he let fall a small bit of testimony that evidently he had not thought of at the Conspiracy Trial or when con-

coeting his affidavit, but which doubtless he foresaw would be a tempting morsel to the reporters as it has been ever since to writers on the subject.

He testified that in Booth's absence he "heard her call him 'Pet.'" "I am positive she used the word 'Pet.'" (S. T., 400.) That word, in all the mass of testimony taken on both trials (except his own on this trial) occurs but once; and that is in Conover's testimony, taken in secret in the Conspiracy Trial and not given to the public until after Wiechmann had testified in that trial and after he made his affidavit.

Conover testified that in Canada "Booth went by the nickname of 'Pet'. I so heard him called by Mr. Thompson, I think; by Cleary I am sure, and by others." (Pitman, 31.)

#### NOTE III. (p. 207)

The witness Dye, for the first time on this trial, testified that, going to Camp Barry along H Street from the theatre after the assassination, a lady opened a window and asked what was wrong downtown. He replied that the President was shot; and, she asking who did it, he told her it was Booth. Since the Conspiracy Trial he learned where Mrs. Surratt lived and it then occurred to him that she resembled the lady, whereupon he went and identified the house.

The defence produced a Mrs. Lambert, residing at 587 H Street, who testified that she was the lady who had the colloquy with the soldier; and she was corroborated by her husband. (S. T., 659-667.)

#### NOTE IV. (p. 210)

The register was filled up with names to the end of the year, the name the prisoner went by being in its proper place in his own handwriting. The prisoner had been in hiding in Canada from just after the date of the entry until he went to Europe in September. These two circumstances are sufficient to establish his presence at the time of the entry for the purposes of the historian, notwithstanding the register may not have been competent evidence under the rules of law. Be this as it may, the cash book of the same date wherein "John Harrison" was credited with the money he paid as a guest, had it been produced, could not have been excluded and its admission would have ended the case.

The proprietor of the hotel who brought the register to Washington did not bring the cash book, being unable to find it; but, on his return

home (if Surratt is to be believed), he succeeded in unearthing it and sent it to Mr. Bradley; an incident which may explain the reluctance of the prosecution to face another trial.

(See testimony of William Failing, S. T., 761 *et seq.*, and Surratt's Rockville lecture, *ut sup.*)

#### NOTE V. (p. 215)

The testimony on behalf of the United States closed on the fifth day of July—having occupied sixteen working days; over eighty witnesses being sworn, of whom but half were sworn on the Conspiracy Trial.

The testimony for the defence, opening on the eighth day of July, closed on the twenty-second, having occupied twenty-nine working days; over ninety witnesses being sworn.

Testimony in rebuttal closed on the twenty-fourth, sixty-four witnesses being sworn, the large majority on the character of witnesses impeached by the defence and thirty more from day to day until the close; the defence on surrebuttal swearing twenty-four and the testimony finally closing on the twenty-sixth.

#### NOTE VI. (p. 216)

##### ON THE DISBARMENT OF BRADLEY SENIOR

On the twenty-sixth of June the judge asking if there were any other witnesses ready on the part of the United States, Bradley pointing to the witness room said: "There are half a dozen out there in the penitentiary," whereupon Merrick added: "Not in the penitentiary now but they will be." The court said such side-bar remarks were not proper. On the first of July, McMillian being examined in chief, a question by Merrick provoked the witness to refer to the counsel's recent remark about the government witnesses as "the act of a coward and a sneak." The court reminded the witness that such language was unbecoming, and the counsel that he ought not "to worry witnesses into a bad temper." The next morning Bradley, calling the attention of the court to the language of the witness, insisted that it was due to its dignity to take some adequate notice of the matter. The judge again admonished the witness but coupled his rebuke with an intimation that Merrick's remark included such respectable persons as General Grant and Frederick Seward who were in the witness room; a construction which Merrick disclaimed as unfair. There the affair rested for the balance of the trial.

Immediately after the jury was discharged, Judge Fisher directed the entry of an order striking Bradley from the roll of attorneys practising in his court; reciting that after the passage of words on the second of July, as the judge was descending from the bench, Bradley, after charging him with a series of insults from the commencement of the trial, threatened the judge with personal chastisement.

The case subsequently came up before the supreme court of the district which made another order for his disbarment; and Bradley obtained from the Supreme Court of the United States a mandamus annulling the latter order on the ground that the court that made it had no jurisdiction to punish for contempt committed in another court.

Bradley brought an action for damages against Fisher alleging that his order was a malicious act founded on a fabricated statement of facts; but he was nonsuited on the ground that judges were not liable in damages for acts done in the discharge of their duties, provided the court had jurisdiction.

(7 Wall. (U. S. Rep.) 364; 13 Wall. 335).

## NOTES TO CHAPTER IX

### NOTE I. (p. 223)

The counsel added:

“You were going to show, too, that nobody prevented access to the President on the part of those who wanted to get a pardon. Why didn’t you do it? . . . You remember that day, gentlemen. Twenty-four hours for preparation. Priest, friend, philanthropist and clergymen went to the Executive Mansion . . . to implore for that poor woman three days’ respite to prepare to meet her God, but got no access. The heart-broken child . . . stretched upon the steps that lead to the Executive Chamber . . . raised her hands and prayed to any one that came . . . ‘Let me have access, that I may ask for but one day for my poor mother—just one day!’ Did she get there? No. And yet says the counsel there was no one to prevent access being had. Why don’t you prove it? . . . How would I not have rejoiced in the fact. . . . Who stood between her and the seat of mercy? Has conscience lashed the chief of the Bureau of Military Justice? Does memory haunt the Secretary of War? Or is it true that one who stood between her and Executive clemency now sleeps in the dark waters of the Hudson, while another died by his own violent hand in Kansas?”

[Preston King committed suicide on November 12, 1865, by jumping off a ferryboat into the Hudson, with a bag of shot in each overcoat pocket. "Jim" Lane cut his throat July 11, 1866;—these were the keepers of the door to the executive office.]

NOTE II. (p. 234)

During the greater portion of the eight years since the hanging of Mrs. Surratt, Bingham and Holt were living in the capital, standing shoulder to shoulder during the contest over reconstruction and the impeachment and trial of the President, and must have been cognizant of the scene on the Surratt Trial when the record with the petition was exposed to public view.

Bingham, who had drafted the paper in question, even before the execution had taken pains to put himself in possession of the facts of the case, and yet through all the vicissitudes of these eventful years, he never so much as whispered them into the ears of the officer whom they most concerned. As Holt says: "Every time this slanderous rumor reached him . . . —which was doubtless often—his awakened memory must have reminded him that he held in his keeping proof that the rumor was false." That Bingham was guilty of such deliberate cruelty and after so many years' insensibility to his friend's sufferings should rush so eagerly to his relief, is hardly credible even on his own confession. But the explanation he gives passes the bounds of belief. Why should a statesman—occupying so independent a position—to the condign injury of his professional brother "scrupulously observe" the advice of Stanton which, as Holt exclaims, was "a sad, sad mockery"? And why, if the death of that adviser did not release him from his bond of silence, did the death of Seward, who gave no advice, loosen his tongue? If (to employ the heated rhetoric of the judge-advocate), "after the Secretary of War had, amid the world's funeral pomp, gone down into his sepulchre, the truth came up out of the grave to which he had consigned it," why was the resurrection delayed until the Secretary of State had joined his colleague in the underworld?

Furthermore, who can credit that Stanton uttered advice so fatuous in itself and so injurious to his faithful subordinate? As Holt pathetically remarks: "Committing my reputation to the arbitrament of a tribunal from which the proofs of my innocence were to be carefully excluded." "A deliberate and merciless sacrifice," indeed, as Holt calls it. But what drove the master thus to nail his servant to the cross? The servant lays it to "fear of Andrew Johnson's resentment

added to a determination on his part to leave my reputation—then under fire from his silence—to its fate.” When the “advice” was given Stanton could have had no grounds to “fear the resentment” of the President for his uttering the truth; and, when afterwards he deliberately challenged that resentment he acted as though it was the last thing he feared; and it does not lie in the mouth of this most obsequious of his minions to charge him with the cowardly baseness of betraying a follower whom he knew to be innocent to screen an enemy whom he knew to be guilty. He probably thought that, if his own reputation could stand the “silence,” that of his co-worker in the dark might be left to shift for itself.

#### NOTE III. (pp. 239, 252)

Speed’s phenomenal reticence was fully exposed to the country a year after his death.

In the July number of the *North American Review* for July, 1888, was published a correspondence carried on between Holt and Speed in the year 1883—furnished to the magazine by Holt. Pursuant to promise, Holt sent his friend his two pamphlets, the *Vindication* and the *Refutation* of ten years before, with a request that Speed “carefully examine the proofs arrayed” in their pages. In his letter Holt makes it clear that the exaggerated estimate of the inviolability of cabinet proceedings exhibited by his correspondent to excuse his silence on the former occasion, has no application to a case like the one under discussion; and puts to him squarely the alternative of at last doing justice to an officer whom he knows to be innocent or of being an accomplice of an assassin of character.

Speed, for six months, begs off on the pleas of the loss of his spectacles, of bereavement, of press of business, and then replies: “After very mature and deliberate consideration, I have come to the conclusion that I cannot say more than I have said.”

Holt apparently was driven frantic by such treatment. “Your forbearance towards Andrew Johnson, of whose dishonorable conduct you have been so well advised, is a great mystery to me. With the stench of his baseness in your nostrils you have been all tenderness for him, while for me, . . . you have been as implacable as fate.”

It seems never to have occurred to the judge advocate that Speed in fact had nothing to say in his favor, but, rather than confess ignorance

on so critical a matter, took refuge in the irrelevant plea of cabinet secrecy. Such a supposition would have dispelled the mystery he complains of.

Speed offered to write a letter "not to be used until after Holt's death"; but Holt, with a perspicacity which he did not show in the similar case of Bingham's information, replied "that a letter thus strangely withheld from the public would not, when it appeared, be credited."

Speed states also that he offered to open his mouth if Johnson consented; but this Holt denies, pronouncing the statement an evidence of his friend's failure of memory.

The "bait" that Speed would not take was clothed in the following words:

"I have learned that, although you gained the information while a member of the Cabinet, it was not strictly in your capacity as such, but that at the moment I laid before the President the record . . . with the recommendation . . . , you chanced to be so situated as to be assured by the evidence of your own senses that such petition or recommendation was by me presented to the President, and was the subject of conversation between him and myself."

If this was true (and Speed does not deny it) why did not Speed avail himself of the coincidence? And how was it that Holt did not know it at the date of his first appeal to the ex-attorney general?

#### NOTE IV. (p. 253)

Colonel Burnett in his paper read before the Loyal Legion, April 3, 1889, says: "And now for the motive. . . . The presidential bee was buzzing under the accidental presidential hat. . . . Somebody whispered loud enough for Mr. Johnson to hear—perhaps the bee buzzed it—that if the Southern States could be reconstructed previous to the presidential convention of 1868 and he should be found friendly and faithful to the South in that work, there were fifteen Southern States whose electoral votes might be found solid for him as the Democratic nominee and he would only need the votes of two or three Northern States in addition to carry off the renomination. You know how the poison took . . . how he fought the Congress with a bitterness and boldness unparalleled in history. . . . And now turning to Mrs. Surratt and her case. Over her execution a great clamor was raised throughout the country not only by those lately in rebellion, and those in the North who were

in sympathy with that rebellion, but almost universally by the Roman Catholics. Mr. Johnson heard this clamor and 'his startled ambition grew sore afraid' . . . His new friends and allies were calling upon him with a loud voice to know why he had not heeded the appeal for mercy. Here was a sufficient motive—the motive that changed the whole nature of the man . . . spoiled the purpose of his life.



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